ESHB 1419 Report
Washington's
Solid Waste Permit System

Review of the Solid Waste
Permit System for the Use and Reuse of Materials
and Recommendations for Improvements
(Engrossed Substitute House Bill 1419)

Washington Solid Waste Advisory Committee
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for Washington's Solid Waste Permit System
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Section 5 The legislature finds that:

(1) The **scope of recycling activities in the state have expanded** rapidly beyond traditional household materials and into the agricultural, commercial, and industrial sectors of the economy;

(2) A **significant infrastructure has developed** over the past several years to collect, process, remanufacture, and use commodities that would otherwise have been landfilled or incinerated;

(3) The **infrastructure is linked to, but distinct from, the collection and disposal infrastructure** for tradition household, commercial, and industrial wastes;

(4) The **current solid waste permit system does not distinguish** between materials collected and processed for use or reuse and those materials collected for disposal;

(5) A **comprehensive review is necessary** to evaluate the feasibility of regulating commodities destined for use or reuse in **a way that is less burdensome than the current permit system while still protecting public health**.

Section 6 A new section is added to chapter 70.95 RCW to read as follows:

(1) The department, in conjunction with the solid waste advisory committee, shall **conduct a comprehensive review** of the solid waste permit system **to determine how the use and reuse of materials can be improved**. **By December 15, 1997**, the department shall **submit a report** to the appropriate standing committees of the legislature that **provides specific legislative and regulatory changes to the solid waste permit system**. The review shall include, but not be limited to:

(a) An **analysis of** the **risks** posed by **materials destined for disposal and** the risks posed by materials **destined for use or reuse as a commodity**;

(b) A **method** or methods **to determine** when a material is a **solid waste or a commodity**; and

(c) **Recommendations to regulate materials** in a manner that is **commensurate with any risk** the material may pose. These recommendations shall specifically **identify the appropriate level of regulation for** materials collected for:

(i) **Use or reuse as a commodity**;

(ii) **Use or reuse as a solid waste**; and

(iii) **Final disposal**.

(2) The department **may recommend to exempt materials** from solid waste permitting requirements **or to establish general permits** for materials or categories of materials.

(3) This section **does not invalidate the existing authority** of the department to exempt waste materials from regulation under this chapter before completing the review required under subsection (1) of this section.

(4) The review under subsection (1) of this section **shall not include recommendations on the franchise system** regulated by the utilities and transportation commission

[Emphasis added]

Chapter 1
Executive Summary

What is the 1419 Study?

The 1997 Legislature passed ESHB 1419 directing Ecology to conduct a comprehensive review of Washington's permitting system for handling and managing solid waste. The review was to address:

- Alternatives to statutory definitions;
- Permitting requirements;
- Risk assessment; and
- The overall regulatory system as it pertains to solid waste and recyclables.

The Solid Waste and Financial Assistance Program worked with the State Solid Waste Advisory Committee, held public workshops and received comments on our draft report.

How was the Study Conducted?

The Department looked at options other than the "one-site/one-permit" systems we currently have. Permitting structures of other states were investigated as well as permit systems in other Ecology programs. The current local permitting process was also evaluated. What we found was:

1. Other media have other permitting mechanisms besides individual site/individual permit;
2. Other states use varied approaches;
3. Local permitting processes, such as conditional use permits and solid waste permits, can be a point of conflict.

What Did the Department Propose?

The draft study looked at creating some type of categorical exemption for solid waste activities and materials that is more broadly based than in the current regulation.

We proposed a beneficial use test for products and commodities, that could be legislatively sanctioned and developed in future rule making.

It was proposed that for certain classes of facilities and handling practices, permits could be issued by the state through a general permit, similar to the Water Quality Program permits. This would be for certain classes of facilities with low level of risks.
While this approach would shift the permit authority on those facilities for local government to the state, the enforcement authority would remain at the local level.

We also looked at the question of "how many permits are enough?" Is it possible to create a mechanism that would defer to another permit that a facility needs to receive and thus lighten the regulatory burden for the applicant.

What Did the Department Hear During the Study Process?

Several issues have been addressed during this permit review study. The Department held workshops around the state and invited written comments on the draft study.

Many of the issues raised by the study can be dealt with during the rule revision process to update chapter 173-304 WAC, *Minimum Functional Standards for Solid Waste Handling*. Some other issues may require legislative action at a future date.

Some of what the Department has heard includes:

Changes to What?

There is limited interest in looking at wholesale changes to the solid waste permitting system, especially if it means changing who issues the permit. Garbage and disposal related facilities and handling methods should not be modified. What should be looked at further is how the permitting for low risk facilities, such as recycling facilities, could be modified. Public comment suggested that this should be undertaken as part of the Minimum Functional Standards (ch. 173-304 WAC) rule revision process where roles and responsibilities can be addressed.

Consistency vs. Local Control

There is a strong local control issue involved with the regulation of solid waste. Local governments do not want changes in the permit process and regulatory system, especially if it means loss of control. Not unexpectedly, in the eyes of most regulators, the system is working well. For some of the regulated community, however, the current system possesses encumbrances and inconsistencies.

Alternate Permit Approaches May Be Possible

Local governments seem to be willing to consider a permit-by-rule or a general permit

approach, if those would be options for their permitting process and not mandatory. They do not support changing the focus of who issues the permit. The regulated business community found the possibility of general permits appealing. These options will be evaluated during the 304 rule revision process and may not require statutory changes.

How Many Permits are Enough?

Deferring to other permits was proposed and may be considered during the rule revision process. Deferral could be made to air quality permits or water quality permits issued by Ecology or other permits issued. However, local governments are not interested in changing local land use permit systems. Not all local governments have land use ordinances appropriate for solid waste facility permitting. Many do not want to further encumber already overburdened systems with additional responsibilities.

Legislative Action To Be Considered

Two areas that may be available for the Department to pursue during the rule revision process include:

1. Categorical exemptions of materials/products or handling practices from the solid waste permitting rules, much like SEPA; and

2. Beneficial use reviews and determinations for materials land applied.

Receiving public comment , we clearly heard that state regulations were inconsistently applied through the various local jurisdictions that enforce them. What the state can do about this is to make it clear what is and is not subject to permit and regulation and when. Establishing a process for categorical exemption of specific materials and processes would provide strong and clear direction and provide the needed consistency.

Summary

In summary, many of the issues identified during this study can be addressed by regulatory rather than statutory change. Regulatory change will be pursued further as we move into revising the Minimum Functional Standards during the 1997-1999 timeframe.

Possible areas where legislative direction may be useful include providing categorical exemptions to solid waste permitting, and setting up a use review determination process for materials that are land applied.

What Next?

For now, there is not consensus from the various interest groups on the best approaches to take. There is, however, a strong foundation to begin building consensus through rule making, which the agency intends to initiate immediately and plans to complete in 1999.

The agency has existing rules, Ch. 173-304 WAC, that set minimum functional standards for solid waste facilities and describe the current permitting process. These regulations were created prior to the initiation of the comprehensive waste recycling systems in place today throughout the state. These regulations clearly need to be updated.

In addition, Ch. 70.95 RCW, Solid Waste Management Reduction and Recycling Act, should be reviewed as well to reflect the current business and waste management system. Two areas that the legislature should authorize Ecology to pursue are:

1. **Categorical exemptions for wastes that are recycled and pose no human health or environmental threat; and**

2. **Establishment of a use review determination process for materials that are land applied.**

Generally, there remains disagreement in the following areas:

- How to establish risk. Should risk be assessed by looking at the material, the processing of the material, the application of the material or all three?

- Can the recycling industry be treated equally throughout the state with a variety of local ordinances implemented by multiple jurisdictions that have enforcement oversight?

- Do regulations and permit requirements place an undue burden on suppliers of recycled materials, which are not applied to primary material suppliers that provide the same, albeit new, materials?

- Can deferral to other permit processes successfully achieve reform in regulatory activity or will it make the permitting of solid waste facilities more complicated by bringing in other permitting processes not related to solid waste management? How disruptive would deferral be to existing permitting arrangements related to enforcement?

- Will categorical exemptions for specific wastes or handling methods allow practices that could pose a risk if not appropriately managed? What would be the enforcement mechanisms available should that happen?

- Should the "use review determination" (beneficial use determination) be limited to land application of waste derived products only, or should it apply to all recycling processes and recovered materials?

- Can the existing permitting system, with its inconsistencies in enforcement, be clarified to incorporate the needs of our existing waste management system without wholesale change?

The following chapters reflect the details that support our findings and recommendations. External comments are incorporated to reflect improvements to the study, and where there remains disagreement and a need for further development.

Chapter 2
Why Study the Solid Waste Permit System?

Background to ESHB 1419

In 1969, the state of Washington passed its primary law addressing the handling and disposal of solid waste.[1] Chapter 70.95 RCW, *Solid Waste Management – Reduction and Recycling*, addressed the solid waste management issues of the time, when almost every community had its own open-burn "dump," and recycling meant the Boy Scouts' annual newspaper drive. The law, and the regulations adopted to implement it, required individual permits for each "facility" and made no distinction between waste from a residence and waste from a factory. Over the past three decades, this "one size fits all" approach has not kept up with the vast changes in waste management, where today's "waste" can be tomorrow's valuable "commodity," and "facility" can refer to just about any structure or piece of ground that comes into contact with waste.

In recent years, due in large part to the fundamental shifts in the way in which we manage solid waste (i.e., more recycling, less disposal), questions have risen about the solid waste permitting system. Specifically, has the structure of this system actually impeded progress toward greater levels of recycling? Moreover, in an era of diminishing resources, does the current permitting system allow regulatory agencies at both the state and local level to focus on where environmental risk remains from solid waste management practices? Are we over-regulating in some areas and under-regulating in others? These concerns were voiced by both Ecology and the recycling business community.

As a result, in 1997, the Legislature directed Ecology to review Washington's permitting system for handling and managing solid waste, and to report back with proposed specific legislative and regulatory changes to the solid waste permitting system. The approaches put forth by the study attempted to satisfy the needs of the private competitive market and the need to protect and preserve the air, land and water resources of the state.

History of the Problem

Chapter 70.95 RCW, *Solid Waste Management – Reduction and Recycling*, established the authority of local general governments to plan for solid waste management and the authority of local jurisdictional health departments and districts to permit solid waste handling facilities. This combination of comprehensive solid waste management plans and "disposal site" permits carried out the objectives of the act.

[1] Solid waste is defined as "all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials.

The regulations adopted to implement the law – chapter 173-304 WAC, *Minimum Functional Standards for Solid Waste Handling* and chapter 173-351 WAC, *Criteria for Municipal Solid Waste Landfills* – continued this approach of individual permits for each facility or site.

The law remained basically the same for 20 years, while the world of solid waste management and public attitudes towards recycling underwent significant changes. In 1989, an amendment made recycling a fundamental part of solid waste management in Washington. The amendment also established a "50% reduction-rate-by-1995" goal and made waste reduction and recycling of source-separated materials the state's highest waste management priorities. The figure, "Current Permitting of Recycling Facilities," illustrates this system.

Since 1989, recycling in Washington has increased tremendously, both in volume and types of material recycled. Much of this growth has occurred in the residential arena, with the encouragement and under the oversight of local government. But reuse and recycling of industrial, commercial, agricultural and other waste is also increasing statewide. This trend away from landfilling these materials has presented local jurisdictional staff with the need to decide whether something is a material or a waste, and how to regulate a rapidly expanding universe of materials and management practices.

A case in point is woodwaste. Early in 1996, a group of woodwaste handlers, composters and marketers approached Ecology about perceived inconsistencies in how the current rule permitted recycling facilities. The minimum functional standards treated identical piles of woodwaste differently depending on their intended end use. If the woodwaste was being stored before recycling, it required a recycling permit, which meant a fee and the delay while the permit was processed. But if the woodwaste was being stored in piles "temporarily" before being burned in a hog fuel boiler or used as a raw material, it did not need a permit. This is one of the numerous examples where identical waste handling practices have different permitting requirements.

Besides the need to address consistency in regulatory permitting, there is also the concern to ensure the safety of solid wastes that are being reused or recycled. This safety concern is expressed in terms of **potential** human health hazards and **potential** environmental threats to the air, water or soil. For example, industrial wastewater treatment sludge applied to the land as a soil conditioner could pose a potential hazard if the sludge contains chemicals that persist in the environment and that could be harmful if allowed to accumulate. Another example is the potential for leachate to enter surface water from the composting of organic matter. [2] Logically, regulatory oversight should be matched to the degree of risk present.

In producing this report, Ecology and the SWAC have sought to highlight ways to clarify laws, supporting rules, and guidelines that will help local government and all who generate, treat or otherwise handle solid waste material. An additional goal was to find a way to regulate recovered materials destined for use or reuse, which would not be as burdensome as the current permit system. Above all, any proposal had to ensure that human health and the health of the

[2] Before proceeding, however, we need to acknowledge the many ways in which biosolids, agricultural wastes, pulp and paper sludges and many other organic and inorganic wastes have been and are being beneficially applied to the land in safe and resource-efficient ways.

environment were protected, while encouraging economically sound solid waste management and beneficial uses. The SWAC prepared a guiding statement (Appendix 1) for use in this report.

Regulation and Risk

The existing system of determining risk regarding waste is already established through federal and state laws. Since 1978, the first determination has been whether a solid waste is hazardous or not. Hazardous wastes are those wastes that are toxic, flammable, corrosive, or reactive. We determine the relative risk of solid wastes by considering whether they are beneficially used, stored, processed or disposed.

Ch. 70.95 RCW includes recyclable material in the definition of solid waste. The State desires to remove unnecessary regulatory barriers to strengthen the recycling industry and increase recycling. Secondly, we desire to improve local government's ability to prevent the few bad actors from adversely impacting human health and the environment. There have been incidences of collecting waste materials under the guise of recycling and then abandoning the material (sham recycling), and applying contaminated materials to the land as fertilizer or under the guise of reuse (use constituting disposal).

The difficulty is that seeking the consistency statewide that is desired by the recycling industry is perceived by local governments as infringing on their local authority and their ability to respond to local concerns.

The state law and regulations prescribing the system implemented by local governments only provide for one type of permit, regardless of the risk. Some categorical exemptions are allowed, in Section 015, and the applicability of the law to recycling is addressed in Section 300(i). See the figure *Current Permitting of Recycling Facilities*.

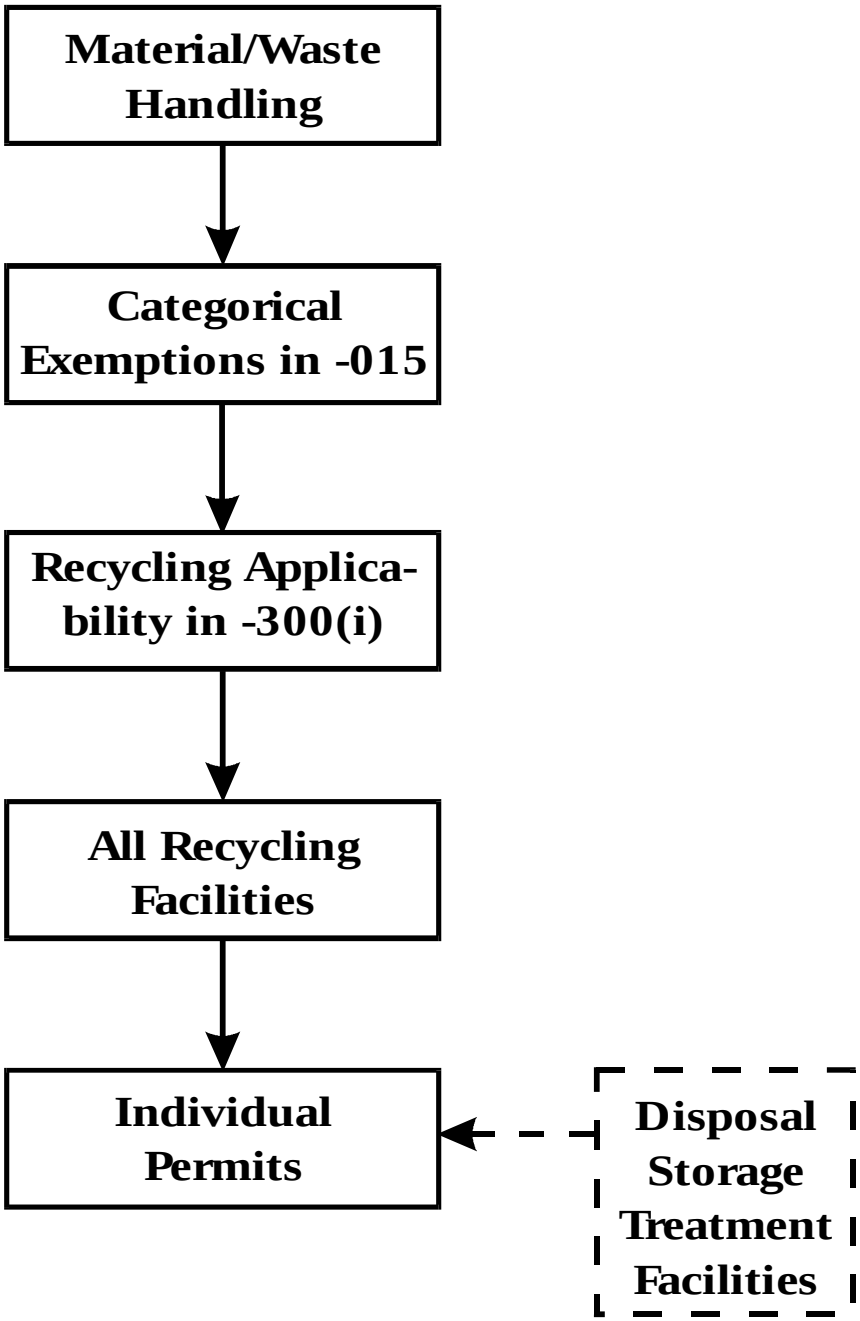
Public Workshops and Comments

This study was conducted over the past seven months, after the Legislature passed ESHB 1419 in April 1997. Ecology, working with the State Solid Waste Advisory Committee, held a series of workshops throughout the state to ask the following questions:

1. What aspects of solid waste permitting and regulation seem duplicative of or contrary to other state or local permits required for recycling businesses?

2. Can you provide examples where inconsistent permitting, planning or enforcement from one jurisdiction to the next, either health department or county land use department, has hampered your ability to recycle and develop markets for your recyclables?

Current Permitting of Recycling Facilities



3. At what point in the recycling and recovery process do you think that a recovered material should be no longer be considered a solid waste and exempt from further solid waste regulation?

4. Based on the introductory presentation, what permitting options for addressing regulatory problems associated with recycling make the most sense to you? Which ones concern you the most?

The range of comments from these workshop discussions helped define the problem. Taken broadly, these comments were:

Aspects of solid waste permitting that seemed duplicative or contrary to other state or local requirements for recycling activities.

- Need statutory and rule consistency between hauling and transport laws and environmental laws, for the definitions of "recycler" and "recycling," "waste" (for example, scrap metal), and "recyclable material." If "recyclable material" is not clearly defined, then practices wind up getting permitted, rather than materials. Definitions of "solid waste" and "recycling" are also important for interstate issues.

- There is inconsistency between the legal requirements for permitting and jurisdictional health departments not requiring permits in some cases.

- Existing Department of Natural Resources rules and permits for pit reclamation are inconsistent with solid waste rules.

- Need technical consistency in the rules regulating material recovery facilities and transfer stations, since they are similar processes.

- Liquids from composting are treated inconsistently; they are considered as leachate **and** as stormwater. Air and solid waste rules conflict regarding odor from composting facilities.

- Need coordination between solid waste permitting and conditional land-use permitting. People feel they are in an "endless loop" between the two processes, especially for composting operations. Changes in zoning also contribute to the problem.

- Solid waste permits and federal National Pollution Discharge Elimination System (NPDES) permits for lagoons may be redundant.

Examples of inconsistent planning, permitting or enforcement activities, which hampered the ability to recycle or develop uses for, recycled material.

- Solid waste plans are difficult to implement because of inconsistent private recycling.

- County solid waste planning gives public recycling political advantages over private recycling, as well as control over small towns and cities.

- Exemptions from permitting should be specified in the local solid waste plans.

- Growth management plans should be coordinated with solid waste plans.

- Need statewide consistency for enforcement and to inform those applying for permits of what they have to do and when they can get their permit. New businesses face variations between counties in permit requirements, in land use rules, and in requirements for information. There are too many players involved. In counterpoint, the jurisdictional health departments are asking for flexibility in responding to differing needs.

Methods or procedures to identify points at which materials recovered from solid waste should no longer be considered solid waste and exempt from further solid waste regulation.

- The general principals for making the distinction should be based on risk and should include the opportunity to self-designate.

- Source-separated materials and materials collected at the curbside should not be considered waste.

- Scrap metals should not be considered waste, following recent U.S. Environmental Protection Agency (EPA) decisions in the hazardous waste program.

- Applying sawmill waste with dirt and rocks to the land requires a permit.

Different permitting approaches or other regulatory mechanisms, which could address perceived problems in the current system.

- As a general strategy, regulate the process rather than the material.

- Ecology should provide incentives to make it easy to comply.

- Make it easy for the jurisdictional health department to enforce violations. A graduated penalty policy would be useful.

- Streamlining permitting, as Oregon has, would enable Washington to continue to attract and retain recycling businesses.

- Changing regulatory definitions present a risk to local governments that are straining under the financial burden of managing recyclables. Defining more material as recyclables would add to their burden.

- Conditional exclusions could be used if they are clearly set forth using a standard methodology, and violations are prosecuted.

- Permits-by-rule need to be used for narrow, specific handling methods.

- General permits should be reflective of a class that might otherwise be the subject of best management practices, like compost. Who should issue general permits – Ecology or the jurisdictional health department?

- Deferring solid waste permitting to other environmental permits should reflect whether solid waste permits add any value to environmental protection. An example is NPDES permits for surface impoundments.

- Should raw materials and recycled materials be regulated on the same basis?

Other Issues

- Institutional roles were mentioned several times. Concern was expressed about the effect regulation changes would have on the existing collection and recycling systems. It was noted that coordination is needed to help obtain all of the environmental permits (one-stop permit shopping).

- Improvement is needed in the way complex regional facilities are handled by Ecology and the jurisdictional health departments. What will be Ecology's role in ensuring consistency across the state? In providing technical assistance? Where a local decision turns down a needed regional facility, perhaps for reasons of political pressure? One suggestion was for a state appeal process when such a facility is turned down.

- Financial aspects were mentioned several times. Who claims the collection fee – the waste hauler or the recyclers? Don't place unrealistic expectations on recycling efforts to be economical. Don't inhibit recycling efforts with requirements while the extractive (non-recycling) processes are not so burdened.

Results of Draft Report

Ecology studied the issue, considered the comments, and reviewed programs in other states with claimed higher recycling rates than in Washington. Ecology found some innovative approaches, such as a use review determination in Massachusetts.

Ecology prepared a draft report with possible recommendations and released it for review. Comments received at those workshops were considered and incorporated into the report.

Chapter 3
How Are Solid Waste Activities Permitted in Washington?

Solid Waste Permits and Local Comprehensive Solid Waste Plans

Permits are a common tool used throughout government to ensure that activities are carried out or conducted in a manner that conforms to an established norm, standard, regulation or law. State and local governments issue many different types of permits that control environmental and human health impacts. Plans typically create the reference for using permitting activities, especially at the local level.

The law governing the environmental aspects of solid waste management plans and permits is Chapter 70.95 RCW, Solid Waste Management Reduction and Recycling. It requires local governments to adopt local comprehensive solid waste management plans, and to provide a permitting mechanism to ensure that solid waste activities allowed in each county conform to statewide minimum functional standards. It establishes local jurisdictional health departments and districts as the bodies with the authority and responsibility over solid waste permitting. According to the law, solid waste permits must conform to the approved comprehensive solid waste plan.

The law also makes Ecology responsible for the preparation and periodic review and revision of the state solid waste management plan. The state plan allows "local governments revising local comprehensive solid waste plans …[to] take advantage of the data and analysis in the state plan." Ecology's role in the local solid waste planning process is to work cooperatively with local governments during plan development and to provide technical assistance to cities and counties. Ecology reviews and comments on preliminary and final drafts of local solid waste management plans, plan revisions and plan amendments for conformance with applicable state laws and regulations and approves or disapproves them. Ecology also reviews all permits for solid waste disposal sites or facilities issued by jurisdictional health departments.

Two rules govern solid waste management: Chapter 173-304 WAC, Minimum Functional Standards for Solid Waste Handling[3] and Chapter 173-351 WAC, Criteria for Municipal Solid Waste Landfills. This report will not address Chapter 173-351, since it deals only with the limited universe of municipal solid waste (MSW) landfills and sets forth individual permits for each landfill.

[3] Solid waste handling is defined as "the management, storage, collection, transportation, treatment, utilization, processing, and final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from solid wastes or the conversion of the energy in solid wastes to more useful forms or combinations thereof."

The law apportions responsibility for solid waste management among citizens, local governments and the state. This can be illustrated by the responsibilities for recycling:

- Citizens are responsible to minimize wastes and to separate recyclable or hazardous materials from mixed waste.
- Cities and counties have primary responsibility for solid waste management; and for developing and carrying out aggressive and effective waste reduction and source separation strategies. They must develop local comprehensive solid waste management plans and adopt regulations or ordinances governing solid waste handling.
- State government's responsibility is to ensure that recycling opportunities and incentives are available to all persons in both rural and urban areas, including nonresidential waste generators such as commercial, industrial, and institutional entities.
- State government is also responsible for setting the technical standards for facilities and to create the institutional structure of the permitting system – which is the subject reviewed in this report.
- Finally, it is the responsibility of city, county, and state governments to provide for a waste management infrastructure to fully implement waste reduction and source separation strategies, and to process and dispose of remaining wastes in a manner that is environmentally safe and economically sound.

Status of Solid Waste Management Plans in Washington

The State's Solid Waste Management law sets a 50 per cent goal of waste reduction and recycling. This was to have been achieved by 1995. All counties and cities in Washington have prepared comprehensive solid waste management plans towards this end. (See Appendix 2) They have also prepared various instruments, such as ordinances and resolutions, to implement the plans. Health departments and jurisdictional health districts enforce the plan by issuing permits for both public and private facilities.

Under the "Waste Not Washington Act," counties were to revise their solid waste plans to include a waste reduction and recycling element. The Legislature recognized that not all counties would be able to meet these requirements at the same time. The larger, more urban counties were to complete their plans first, with smaller, more rural counties later. Plans were to be completed on the following schedule:

Phase 1: July 1, 1991 (Spokane, Snohomish, King, Kitsap, and Pierce counties)
Phase 2: July 1, 1992 (all other counties west of the crest of the Cascades)
Phase 3: July 1, 1994 (all counties east of the crest of the Cascades, except Spokane)

By 1996, all but four counties in the state had an updated Solid Waste Management Plan that meets the "Waste Not Washington Act" requirements and sets forth recycling and waste reduction goals. Three of the counties that do not have revised plans are within the Phase 3 planning area. All four counties are in the process of updating their plan to include the waste

reduction and recycling requirements. Implementation of the plans in the Phase 1 and 2 counties is well underway, with most of the Phase 3 counties beginning their implementation.

Scope and Content of Permits

Once the local plan is approved, any solid waste handling must be done under permits from the jurisdictional health department or district. Virtually everything is subject to the site-specific permitting process, regardless of the level of risk to human health and the environment.

Only two types of sites and nine types of materials are exempted from this process:

- Single family residences and single family farms
- Remediation (cleanup) sites, which are under state or federal corrective action
- Overburden from mining operations intended for return to the mine
- Liquid wastes whose discharge or potential discharge is regulated under federal, state or local water pollution permits
- Dangerous wastes as defined by chapter 70.105 RCW, Hazardous Waste Management and chapter 173-303 WAC, Dangerous Waste Regulations
- Woodwaste for ornamental uses, animal bedding, mulch and plant bedding, or roadbuilding purposes
- Agricultural wastes, limited to manure and crop residues, returned to the soils at agronomic rates[4]
- Clean soils and clean dredge spoils as defined in WAC 173-304-100, Minimum Functional Standards for Solid Waste Handling, or as otherwise regulated by section 404 of the Federal Clean Water Act (PL 95-217)
- Septage taken to a sewage treatment plant permitted under chapter 90.48 RCW, Water Pollution Control
- Radioactive wastes, defined by chapters 402-12 WAC, General Provisions, and 402-19 WAC, Requirements of General Applicability to Licensing of Radioactive Material
- Wood debris resulting from the harvesting of timber and whose disposal is permitted under chapter 76.04 RCW, the State Forest Practices Act

Chapter 173-304 WAC sets standards for landfills, surface impoundments, waste-application-to-land-as-disposal sites, waste piles, incinerators, transfer stations, drop boxes, other treatment sites and recycling facilities. The rule:

- Places the most stringent environmental standards on disposal facilities;
- The next most stringent on storage, treatment, and transfer facilities; and
- The least stringent on recycling facilities and solid wastes stored in piles and surface impoundments (for less than three to five years).

[4] The term "agronomic rates" refers to substances applied to crops or soil at a level that will enhance plant uptake of nutrients; higher rates may actually inhibit the nutrient cycle. **For the purposes of this report, the term "agronomic" will be used with a broader meaning**, referring to material which has some plant nutrient or soil enhancing value, whether or not that value actually enhances agricultural crop production.

The health department also regularly inspects solid waste handling sites, such as recycling drop boxes. Facilities not in compliance may be granted variances if the public health and environment are not endangered or if compliance would produce hardship without equal or greater benefit to the public. Annual permitting requirements may be used if health department conditions are met. The health department or district can impose penalties if the operation violates the terms and conditions of the permit and endangers the public health.

Ecology has established engineering and design requirements regarding location and operation of many types of handling facilities, such as landfills, transfer stations and drop boxes. Some facilities also have closure and post-closure assurance requirements, to provide cleanup money if needed. These standards must be met before an owner or operator receives a solid waste permit.

Specific Requirements for Recycling Facilities

There are a number of specific engineering and design requirements that apply to recycling facilities. These include:

- Annual reporting of waste quantities and types
- Time limits for storage in surface impoundments and piles
  - 50 percent used up in three years
  - 100 percent used up in five years
- Actual or potential threat to contaminate air, water or land could trigger full permitting standards for piles or surface impoundments
- Inspection allowed
- Must be consistent with the local solid waste plan
- Must comply with other environmental laws

These recycling standards **do not** apply to:

- Composting at single family farms and single family residences
- Facilities engaged in the recycling of solid waste containing garbage such as garbage composting (regulated in the standards as treatment in piles)
- Storage of tires (regulated in the standards as storage in piles)
- Problem waste (also excluded from handling standards)
- Surface impoundments (regulated in the standards as liquid storage facilities)
- Wood waste hog fuel piles to be used as fuel, or raw materials stored temporarily in piles being actively used (50 percent used up rule applies)
- Any facility that recycles or uses solid waste in containers, tanks, vessels, or in any enclosed building, including buy-back recycling centers

The Permitting Process

The solid waste permitting process begins when an applicant contacts the local jurisdictional health department or other government entity. Frequently the process begins with the land

zoning authorities, which may require a conditional use permit for solid waste activities. The conditional use permit ensures that uses of the land are compatible with surrounding land uses and that such activities are consistent with overall land use planning and orderly development.

Applying for a solid waste permit, a conditional use permit, or other permits triggers another set of procedures under the State Environmental Policy Act (SEPA). Typically, this involves listing possible environmental impacts from a proposed project, followed by a review on behalf of many government entities. The outcome of this process is to determine whether a "declaration of non-significance" can be made or whether a full environmental impact statement (EIS) must be filed as part of the permit issuance process. Most solid waste projects do not require a full EIS.

The jurisdictional health department or district next reviews a solid waste application for completeness of information before forwarding a copy to the Department of Ecology. Ecology may make recommendations to the jurisdictional health department or district on the nature of permit conditions, before the solid waste permit is issued. The permit may be issued for periods of from one to five years, with the jurisdictional health department determining the duration.

The jurisdictional health department or district then issues the solid waste permit to the applicant. The jurisdictional health department or district also sends a copy of the issued permit to Ecology for review. Ecology's review is limited to the permit's consistency with the local solid waste management plan and the minimum functional standards. Ecology's disapproval may trigger an appeal to the Pollution Control Hearings Board.

The process for renewing expiring solid waste permits is similar to the initial issuing process, except that the conditional use permit process need not be repeated.

Types and Numbers of Solid Waste Handling Permits

Tables 1 through 4 summarize the number of permitted solid waste handling facilities reported by the facilities in 1996, showing a total of 311 permitted solid waste facilities in the state. Intermediate facilities formed the largest category with 225 facilities. These include storage piles and surface impoundments, as well as processing facilities, such as recycling facilities, transfer stations, drop boxes, and composting facilities. The 15 recycling facilities reported are thought to be mostly traditional private or public collection centers handling mainly residential waste.

Because some recyclers have been excluded from the current solid waste laws (for example, in building recycling), the true recycling universe is under-reported. Other recycling operations are combined with multiple activities at one site (for example, a landfill or transfer station with a recycling operation). Still others appear in some counties as locally created permit categories. (In King County, for example, special purpose, solid waste treatment sites, and limited use categories are used for permitting specific waste streams.)

Table 1

All Permitted Solid Waste Facilities

CLASSIFICATION	STATEWIDE TOTAL
	1996
Landfills	76
Intermediate Facilities	225
Incineration Facilities	5
Ancillary-Others	5
TOTAL SOLID WASTE FACILITIES	311

Table 2
Landfill Permits

LANDFILL TYPE	STATEWIDE TOTAL
	1996
Ash Monofill	1
Inert/ demolition	21
Limited Purpose	18
Municipal solid waste	23
Woodwaste	13
TOTAL	76

Note: These tables show what is reported to Ecology. It does not capture the complete universe of facilities or permits. There are many more facilities and permits handled by jurisdictional health departments and districts.

More information on these **reported** facilities is available on the Solid Waste and Financial Assistance homepage on the Internet, at http://www.wa.gov.ecology/swfa/swhome.html.

Table 3
Intermediate Facility Permits

INTERMEDIATE FACILITIES	STATEWIDE TOTAL
	1996
Baling Stations	0
Compacting Stations	7
Composting Facilities	27
Drop Boxes	71
Moderate Risk Waste Fixed Facilities	17
Piles	5
Recycling Facilities	15
Surface Impoundments	4
Transfer Stations	78
Tire Piles	1
TOTAL	225

Table 4
Ancillary - Others Permits

ANCILLARY - OTHERS	STATEWIDE TOTAL
	1996
Biosolids	N/A
Exempted Facilities	1
Landspreading Disposal	2
Other Facilities	2*
TOTAL	5

*a medical waste recycling facility and an incinerator burning <12 tons per day

Other Environmental Permits

For purposes of this study, it is important to view permitting also from the context of other permits that owners and operators of solid waste facilities must obtain. This knowledge is important to uncover any duplicative permitting that may add costs and administrative burden to the regulated community without added protection for human health and the environment. (Solid waste facilities must also meet other, non-environmental requirements, such as fire and building codes.)

Solid waste facilities, including recycling facilities, are subject to other environmental permits administered under state law. The regulatory mechanisms might include air quality notices of construction and air operating permits, as well as water quality discharge permits of the National Pollution Discharge Elimination System and the State Clean Water Act. Most facilities managing solid wastes outdoors will need surface water non-point source permits to manage runoff from precipitation. State discharge permits can also be required for facilities that discharge to ground water.

Chapter 4
Permitting Mechanisms in Ecology Programs, at the Local Level, and In Other States

Introduction

The State of Washington, by statute and rule, has a permitting system in place for solid waste that is a site by site system. It repeats the permitting process for the same activities over and over, even though the practice or handling activity remains unchanged. It does not address new uses for recovered materials from solid waste. This points out the need to identify ways in which wastes that truly are being used as products and do not harm human health or the environment can be fully removed from the environmental regulatory arena. Finally, the diverse nature of the regulatory system, with each county issuing its own solid waste permits, builds a considerable amount of variation – some desirable, some not – into the system.

One of the challenges in a review of the solid waste permitting system is to consider other environmental media (air, water) and other permitting processes that must take place before a solid waste permit can be issued (notably local land use permitting) when looking for clues to improve permitting performance. This report reviews other permitting approaches within Ecology, the relationship among solid waste, land use and conditional use permitting processes, and what other selected states are doing.

The Department of Ecology already uses a number permitting approaches. These approaches, beyond individual site specific permits, include:

- Permits-by-rule;
- General permits (and their derivative – model permits); and
- Exemptions from permits or standards.

Permits-by-rule are "paperless permits;" they allow coverage of an activity so long as an owner or operator complies with conditions spelled out in the rule. General permits allow many similar activities to be permitted by a set of standard conditions. It is actually one permit, which has many individual sites operating under a standard set of conditions. Finally, there are exemptions from permitting requirements. A waste stream (an effluent, air emission or a solid waste) remains a waste by definition, but is exempted from further regulation (i.e., permitting). An exemption typically is provided in cases where no environmental impact should occur, either by setting a regulatory threshold under which no further regulation is required, or by demonstrating a beneficial use.

Hazardous Waste – Permit By Rule

Ecology regulates solid wastes that pose high risk to human health and the environment as dangerous wastes. Qualities such as acute toxicity and chronic toxicity, as well as physical hazards, qualify a solid waste for special tracking, reporting and handling in Washington. The Washington Dangerous Waste regulation, WAC 173-303-802, sets requirements for **permits-by-rule**[5] for different methods to handle dangerous waste:

- Ocean disposal barges or vessels
- Underground injection wells
- Publicly owned treatment works
- Totally enclosed treatment facilities
- Elementary neutralization tanks
- Wastewater treatment units

The facility standards for each of these handling methods differ slightly, but none requires an application to qualify for the permit-by-rule. Anyone using these methods must notify Ecology, however, and receive an identification number that is used in the manifest tracking system for waste shipments.

These handling methods are also permitted under other environmental laws (National Pollution Discharge Elimination System [NPDES], Underground Injection Control [UIC] and ocean dumping permits), which forms the rationale for the permit-by-rule. EPA explained its permit-by-rule regulations in the *Federal Register* of May 19, 1980 (page 33325):

"…. EPA believes that there can be little question of its ability to issue a permit by rule to facilities where the activities that RCRA [Resource Conservation and Recovery Act] permit would regulate are for the most part already regulated under another EPA permit and the only purely RCRA-related provisions are those that are not site-specific and do not need to be particularized in an individual permit. The choice here is between requiring a duplicate permit proceeding and duplicate paperwork or simply making the missing RCRA provisions applicable through a general regulatory statement. EPA has chosen the latter course."

According to program staff, the permit by rule for wastewater treatment plants is used frequently, especially by industries.

Water Quality – General Permits

Ecology adopted a regulation in 1993 that set administrative procedures for general permits for waste discharges (chapter 173-226 WAC, Waste Discharge General Permit Program). General permits are defined in the regulation as "a permit that covers multiple discharges of a point source category within a designated geographical area, in lieu of individual permits being issued

[5] The permit-by-rule allows an owner or operator to undertake an activity without the issuance of an individual site-specific permit issued by a regulatory authority. A rule or regulation spells out the conditions an owner or operator must meet to maintain compliance with the permit-by-rule.

to each discharger." Unlike Washington's solid waste law, the Water Pollution Control Act gives Ecology direct authority to issue permits and penalties and to write orders. Ecology has issued ten general permits, including those for industrial storm water, upland hatchery and fish farm discharges, and wastewater discharges (process water, storm water and mine dewatering water) from a variety of sand and gravel operations, rock quarries and similar mining facilities.

Like the individual NPDES permit, which is written for a single point source or a single facility, the general permit can contain all the typical wastewater discharge conditions: effluent limitations, compliance schedule dates, effluent standards, and, where appropriate, technology standards. After Ecology issues a general permit and a public notice according to procedures spelled out in the regulation, dischargers must fill out an application for coverage under the general permit within 30 days of issuance. A general permit is typically issued for a five-year term and expires at the same time for all covered permittees regardless of when a permittee applied for coverage. Although a compliance schedule may be established for existing facilities to achieve compliance with general permit conditions, new facilities must comply with all general permit conditions before discharging any wastewater. The general permit is not the appropriate vehicle to address unique conditions that are typically addressed by an individual permit.

The Water Quality Program staff has reported mixed results in the use of general permits. The stormwater and fruit packing processing plant general permits were successful, but the sand and gravel general permit attempted to cover diverse activities and different sets of requirements with a set of options that were confusing for both the regulated community and for Ecology staff. Staff who are responsible for managing the permitted facilities are also not completely satisfied that a general permit adequately addresses specific issues that they encounter at an individual facility. This has led them to explore the use of a "model" permit, in addition to the general permit.

Water Quality – Model Permits

Water quality "model" permits are not mentioned in chapter 173-220 WAC, The NPDES Permit Program, which established administrative procedures for individual NPDES permits. A model permit is a conventional NPDES "individual" permit that allows for site-specific conditions, but provides a shell containing the majority of conditions necessary for issuance to a common group of dischargers. Each permit is issued individually rather than for a geographic area and a group of dischargers, as is the case with general permits. Like most water quality permits, they are issued for five years. The model permit can be updated at will. Ecology has developed a model permit for marine net pen dischargers and is planning to develop a model permit for small publicly-owned treatment works. As with other water quality permits, fees are established by rule and vary according to the industrial category being permitted.

Air Quality – General permits

WAC 173-401-750, General Permits, has provisions for the issuance of general air permits to cover multiple similar sources or emission units in lieu of individual permits being issued to

each air emission source. The rules for general permits are brief, covering issuance, applications and renewal. An owner or operator applies for coverage after Ecology has issued a general permit, and is granted an approval. Either a local air authority or, if no local authority exists, Ecology's regional offices, may make such approvals.

According to Air Quality Program staff, however, the general permit is not being used because new operating permit rules have consolidated into one permit the several permitting and approval processes in air pollution control at the state and federal levels. The operating permit rules also have uncapped permit fees, while the general permits have upper limits on fees. Local air authorities have also not been in favor of general permits because of their lack of flexibility, compared with the operating permit. General permits may be used in the future when and if smaller sources are included in the operating permit program.

Air Quality – Permit By Rule

WAC 173-425-070, Open Burning Permit Requirements, sets up a permit-by-rule for areas of the state where open burning is still allowed. Eight simple requirements are spelled out in regulation; no notification of regulatory authorities is necessary, but violation of any of the requirements could result in penalties.

Solid Waste – Biosolids General Permits

Biosolids and sewage sludge are the treatment residues that result from the primary and secondary treatment of sanitary wastes from public treatment works. The resulting primary and secondary treatment solid residues contain:

- Pathogens (disease-causing organisms, such as certain bacteria, protozoa, viruses and other organisms);
- Vectors (such as flies, mosquitoes or other organisms capable of transporting infectious organisms [pathogens]); and/or
- Persistent heavy metals and organic contaminants concentrated by the treatment process.

Wastewater treatment plant residues with acceptable levels of all three items are classed as biosolids. Those with unacceptable levels are classed as sewage sludge. Sewage sludge cannot be land applied under the biosolids rules.

Most importantly, the recently enacted law, chapter 70.95J RCW, Municipal Sewage Sludge – Biosolids, defines biosolids, beneficially used and reused on the land, as **products** rather than **solid wastes**. Furthermore, the law specifically provides for issuing either general permits or individual permits for biosolids land application facilities and for disposal of biosolids and sewage sludge in a municipal solid waste landfill. Ecology has proposed such a general permitting scheme under a proposed regulation (chapter 173-308 WAC, Biosolids Management) for handling practices, including:

- Application to agricultural land
- Application to forest land
- Application to a public contact site (parks etc.)
- Application to a lawn or garden
- Biosolids sold or given away in a bag or other container

Only exceptional quality biosolids[6] are allowed to be spread on home gardens and lawns under a general permit – in this case issued to the treatment plan operator. Also, exceptional quality biosolids do not have to meet the site management and access restrictions, receive prior written approval of the land owner or meet the land application plan requirements for a normal biosolids land application site.

An important characteristic of the review and approval of the land management plan is that it is a state authority, which can be delegated. Under the general permit, either the generator (treatment plant), the transporter, the composter, or the landowner or operator can submit a notice of intent to be covered and then submit an application. Only one such general permit need be issued for each land owner taking biosolids from several sources, rather than requiring each generator, transporter or storage facility to obtain coverage under the general permit. This avoids a situation whereby the sewage treatment operator is responsible, under the terms of a permit issued to the treatment plant, for the actions of a third party – the land owner or operator – applying biosolids to remote lands.

Solid Waste – Soil Amendment Exemption

The 1997 Legislature passed Substitute Senate Bill 5701, Distribution of Wood Byproducts as Commercial Fertilizer – Licensure. It deals with a narrow range of solid wastes from wood manufacturing processes that are being used as soil amendments. These solid wastes have also been subject to the fertilizer licensing and registration requirements of the Department of Agriculture under chapter 15.54 RCW, Washington Commercial Fertilizer Act.

Ecology has been reviewing these practices unofficially for their human health and environmental safety. SSB 5701 clearly treats such approved solid wastes applied to the land as a material ("a soil amendment"). Because the legislation anticipates that such materials are no longer solid wastes, it calls for the equivalent of a one-time formal use review determination. As such, Ecology's determination will necessarily limit such applications to wastes that are inherently of low risk, or that are comparable in risk to commercial fertilizers on the market.

[6] Exceptional quality biosolids are defined as biosolids that have low levels of heavy metals, and have achieved high levels of pathogen and vector-attraction reduction.

Land-use and Conditional Use Permits at the Local Level

Solid waste permitting in Washington is a local responsibility. As such, it is subject to numerous other permitting processes that can be required of a solid waste handling facility, which may or may not be locally controlled. For example, a solid waste facility that has a water quality discharge is subject to the requirements of the NPDES process or the State Waste Discharge permit. These are centralized permit functions, exercised exclusively by the Department. Similarly, if air permits are required, these permits may be issued by the Department, or by local air authorities if the facility is located in one of the 21 counties in the state with an operating local air authority.

In either case, the receipt of a permit for either air or water (or any other number of environmental permits) is usually viewed as a contingent permit requirement. That is, these permits must be in place before the solid waste handling facility can operate. However, they are not necessarily required to be in hand for a solid waste permit to be issued. The only permit that an applicant for a solid waste permit must already have, assuming their project conforms with the local solid waste plan, is a land use or conditional use permit.

The unique relationship of one local planning and permitting process (land use planning) to another (solid waste planning and permitting) merits some consideration within the context of this report. We primarily examined the possibility of using the land use process to relieve the process or regulatory burdens in the issuing of solid waste permits.

Commonly, solid waste-related operations are allowed in light industrial, industrial and agricultural zones. Land use permitting for these operations in both zoned and non-zoned jurisdictions are typically accomplished through Conditional Use Permit (CUP) systems. As expected with a land use permit, these conditions focus primarily on compatibility issues and seldom prescribe performance requirements. One obvious requirement for a conditional use permit is that a solid waste permit be subsequently issued by the jurisdictional health agency.

Jurisdictional health agencies are required to obtain evidence of land use regulation compliance before a solid waste permit decision can be made. This results in a sequential approach: the land use permitting process is expected to be completed before a solid waste permit application is submitted. Many health agencies will review conceptual designs and plans for a solid waste facility before the actual land use permit is issued. Although a land use or zoning agency can make a compliance determination before issuing a permit, this approach attempts to avoid time and financial expenditures by the project proponent when the result may be a land use permit denial because of public opposition. Furthermore, land use permit requirements may result in project design changes that would require cumbersome revisions in a solid waste permit application if the two processes were not aligned.

A sequential approach also has its disadvantages. Most obvious is the time delay required in completing a sequential approach. In addition, interested parties and the public can be confused by the differing expectations and degree of detail needed to make the individual permit

decisions. Phasing permit review can also result in duplicating efforts in regards to satisfying SEPA requirements.

Some local government land use and health agency staff, however, do believe the process is working well for them because of variations they have made in the process. Most popular is the pre-application meeting, with the health agency involved and able to participate in project discussions from the on-set of the land use permitting phase. Some jurisdictions even have regularly scheduled meetings between permitting agencies, whether applicable projects exist or not. While internal informal policies dictate the degree of involvement by various parties, personalities, staff availability and even political issues can potentially hamper such a process.

Although the two try to achieve concurrency, it can prove burdensome. Depending on the project scope and profile, the willingness of health agencies to participate prior to the land use process may vary. Both the permit applicant and the affected public can be confused by differing expectations and level of detail needed for each individual permit. Duplicative review and duplicative public comment processes also negatively impact public agencies.

Approaches in Other States

In the review of other approaches to solid waste permitting, we looked at seven states that reported to have recycling rates greater than the 40 percent rate reported in Washington. These states are Minnesota, Tennessee, Virginia, California, Georgia, Massachusetts and New Jersey. (See Appendix 3 for profiles of each state.) Three of these states (California, New Jersey and Massachusetts) had some type of county level involvement in solid waste regulatory decision making. The first two have primary permitting authority at the state level with delegable authority to local enforcement authorities or health departments. Massachusetts involves local authorities only in "siting designations." All the remaining states reviewed had centralized state level permitting authorities. Finally, in the review of these states, particular attention was paid to their use of alternate permit structures (permit-by-rules or general permits), exemptions, threshold determinations, and solid waste planning and permitting relationships.

Table 5 summarizes the information gathered from contacts with these states that use other regulatory approaches to solid waste handling facilities.

States either exclude materials/handling practices statutorily in the definition of solid waste (see Massachusetts and Georgia profiles) or not at all. Most states rely heavily on administrative rule writing for excluding/exempting solid waste handling facilities, with conditions. Use review determinations seem popular, although the criteria and confidence level of the regulators themselves seems somewhat undefined or uncertain. The use review determination is analogous to the determination Ecology must now make under the fertilizer bill, SSB 5701. Risk assessment does not seem to be included in the criteria for use review determinations, but clean soil standards are mentioned specifically in one state (New Jersey).

Permit-by-rule seems to be an increasingly common way of regulating recycling practices based upon the lower risk of such solid waste handling practices. General permits seem to be less used by the states. The rational for permit-by-rule seems to be lessened environmental risk,

although existing environmental threats with recycling of non-traditional materials seems to have propelled the trend in some states as well (New Jersey). Tiered permitting in California is being proposed for transfer, material recycling and processing facilities using levels that are comparable to the permit-by-rule and general permit in approach. In California, the local enforcement authorities do not like the inflexibility of the registration permit (equivalent to a permit-by-rule). New Jersey also has tiered permitting. States seem to include various permitting schemes under their general authorization to issue permits for solid waste facilities. With no such permitting authority vested at the state level, our state will have to decide if we want to ask, for example, for authority to issue a general permit.

States seem to have uniform requirements to link the local solid waste management plans and facility permits. California is proposing to exempt the notification permits and excluded operations from that requirement.

Ecology used this information to develop the new approaches discussed in Chapter 6, especially as it related to how such approaches were or were not addressed in the laws of other states. We have noted that much of the details pertaining to simpler permitting, exemption and other mechanisms are contained in regulations rather than in law.

Table 5 Summary of States with Innovative Permitting Mechanisms for Recycling Facilities

State/ Regulatory Agency	**Permitting Agency**	**Material handling practices excluded from solid waste *law***	**Regulatory mechanisms for "excluding/exempting" material handling practices from the solid waste *regulation***	**Permitting mechanisms for recycled solid waste handling practices *included* in solid waste law**	**Solid waste plans *coupled* to permits?**
California Integrated Waste Management Board	Local Enforcement Authority (LEA), if delegated.	A few named practices	• List of Excluded operations (See next column)	**Proposed Rules** Tiered Permits: • "Excluded" operations • Notification permits • Registration permits • Full Permits	Yes (For registration and full permits only)
Georgia Environmental Protection Division, Dept of Natural Resources	Same	Wide variety of **recovered material** processing facilities	None	• Permit-by-rule for most solid waste processing facilities	Yes
Massachusetts Department of Environmental Protection	Local Boards of Health must make siting recommendations in the form of "site assignments" for waste facilities	Recyclable or compostable materials; original manufacturing materials and byproducts	• Conditionally-exempt "recycling operations" • Beneficial use determinations for land applications of waste • Determination of need for site assignment of recycling facilities	None	No

Table 5, Continued

State/ Regulatory Agency	Permitting Agency	Material handling practices excluded from solid waste *law*	Regulatory mechanisms for "excluding/exempting" material handling practices from the solid waste *regulation*	Permitting mechanisms for recycled solid waste handling practices *included* in solid waste law	Solid waste plans *coupled* to permits?
Minnesota	Same	Few practices excluded from the solid waste definition	List of excluded facilities and practices, such as: • Some small facilities handling back yard compost • Generator-separated recyclable materials that fit the definition of mixed municipal solid waste prior to separation for recycling	• Permit-by-rule for recycling facilities handling mixed municipal waste • General permit also available; small transfer facilities and host of other limited risk facilities	Yes
New Jersey Department of Environmental Protection	Same	None	• Exempted recyclable materials; (such as Class A recyclable materials) • Beneficial use projects.	• General/limited approvals for Class B, C, and D recyclable materials.	Yes
Tennessee	Same	None	• List of excluded facilities and practices;	• Permit-by-Rule	Unknown
Virginia Department of Environmental Quality	Waste Management Board	None	• Exclusions from being considered solid wastes • Beneficial use criteria • Conditional exemptions	• Permit-by-rule	Yes
Washington Department of Ecology *(For comparison)*	Local jurisdictional Health Departments	• Biosolids beneficially used on land	• List of excluded materials/facilities and practices (See description in chapter 3.)	• Individual permits	Yes

Chapter 5
Risk and Solid Waste Handling Facilities

Some recycling practices present little or no risk to human health and the environment. A household composting its yard waste for its own use is one example. Other recycling practices present little added risk considering the commodities or uses they replace, such as used asphalt from road pavement projects, recycled and returned as fresh asphalt. How can we use risk to frame solid waste permitting choices?

Using Risk to Frame Approaches to Solid Waste Permitting

We can think of risk as the combined effect of two factors:

1. The inherent toxicity of the material; and
2. How the material is handled.

As an example, consider the disposal of incinerator ash. We measure the risk of incinerator ash using the toxics characteristics leaching procedure. This procedure tests how much of the toxic components in a "solid" form of a waste will dissolve when liquid travels through the material, such as rainwater moving through a landfill. The test compares the result with drinking water standards to measure the toxicity of the waste and its ability to contaminate ground water near a leaking landfill.

If there is risk from the ash, we either:

1. Control the toxicity of the waste, by requiring treatment with phosphoric acid, or other means; or
2. Control exposure, by requiring additional standards (such as engineered liners) for landfills where ash is disposed.

How the material is handled – the processing, recycling or disposal practice used – determines how people and the environment can be exposed to it. Table 6 illustrates these concepts for the entire solid waste management system.

High Risk Recovered Waste or Hazardous Waste Handling Facilities

The highest level of risk concerns waste or material being used, reused, stored, treated, and disposed as hazardous waste, as shown by the first column in Table 6. The numerical line between high risk and medium risk has already been established by rules in the form of four characteristics of hazardous waste: reactivity, corrosivity, three acute physical hazards, and the toxicity characteristic leaching procedure (TCLP – A chronic hazard).

Table 6: Generalized Scheme to Regulate Waste/Recycled Materials and Handling Facilities

QUANTITATIVE RISK LEVEL	HIGH (HAZARDOUS WASTE[7])	MEDIUM[8]	LOW[9]	OTHER MECHANISMS TO EXCLUDE LOW OR MEDIUM RISK WASTE/MATERIALS FROM REGULATION
USE OR REUSE	**Listed recycling processes deemed not to be solid waste practices[10]**	**Use review determination Denied**	**Use review determination Approved**	**Categorical Exemptions**
STORAGE, PROCESSING OR TREATMENT OF SOLID WASTES	**Hazardous waste permit Stringent conditions**	**Medium conditions**	**Minimal conditions**	**Categorical Exemptions OR Permit Deferral**
DISPOSAL OF SOLID WASTES	**Hazardous waste permit Stringent conditions**	**Medium conditions**	**Minimal conditions**	**Categorical Exemptions**

[7] **High risk (hazardous waste)** is a material/waste whose uncontrolled handling (landfilling) creates a risk of chronic injury of at least **one chance in 10,000**. The toxicity characteristic leaching procedure (TCLP) sets thresholds of 100 times drinking water parameters whose chronic risk is one in 1,000,000.

[8] **Medium risk** could be defined as a material/waste whose uncontrolled handling creates a risk of chronic injury of at least **one chance in 100,000** OR for use and reuse practices whose risk is **greater than** the risk of a raw material or product that it replaces.

[9] **Low risk** could be a material/waste whose uncontrolled handling creates a risk of chronic injury of less than **one chance in 100,000** OR for use and reuse practices is **no greater than** the risk of a raw material or product that it replaces.

[10] From Federal rules, 40 CFR Part 261.4(5) to (11)

For example, the TCLP criteria chooses an uncontrolled risk of one in 10,000 for carcinogenic drinking water pollutants that would be mobilized from solid wastes placed in a municipal landfill. This is a quantitative risk that is carried through the entire management scheme from generation, storage, transport, treatment and disposal for purposes of regulation, except for hazardous use and reuse listings as noted below.

The highest level of risk encompasses hazardous waste, which under current state law is a subset of solid waste. Current state and federal law and regulation set forth approaches to defining, tracking and managing hazardous waste storage, treatment, and disposal using stringent permitting regulations.

High risk hazardous waste use and reuse

The hazardous waste rules exclude some use and reuse practices as wastes, although this is done more by listing than by any numerical criteria of risk. Examples of excluding listed wastes are:

- Pulping liquors that are reclaimed in a pulping recovery furnace and then reused in the pulping process…
- Spent sulfuric acid used to produce virgin sulfuric acid…
- Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided…
- Spent wood preserving solutions that have been reclaimed and are used for their original intended purpose...

The use of listings indicates that EPA has not used numerical risk assessment to make decisions about what recycling facilities should or should not fall into the regulated universe.

High risk hazardous waste storage, processing or treatment

These handling facilities would include storage of hazardous waste in tanks and containers, storage piles, and surface impoundments, as well as hazardous waste incineration. These are all regulated through an individual permit issued by Ecology and are designed to ensure that hazardous wastes are managed so that the risk is significantly reduced.

High risk hazardous waste disposal

These handling facilities include disposal of hazardous waste in landfills. These are all regulated through an individual permit issued by Ecology. The landfilling standards are developed to ensure that risk is significantly **controlled** to safe levels.

Medium Risk Solid Waste/Material Handling Facilities

The medium level of risk concerns waste or material being used, reused, stored, treated, and disposed as solid waste, shown as the second column in Table 6. Its upper risk boundary is the

quantitative risk boundary between solid and hazardous waste as discussed above. It is separated from low risk solid waste/materials by the lower quantitative risk boundary. The numerical level of risk that would be specified is beyond the scope of this report and should be the subject of rule-making. One could use the hazardous waste risk boundary, however, for defining hazards associated with uncontrolled disposal in a municipal landfill: one chance in 10,000 for chronic injury as a starting point. Choosing an order of magnitude difference, one could specify a boundary condition ten times that level or one chance in 100,000 for chronic injury associated as a lower threshold of risk for managing a waste/material in the medium risk category.

Medium risk material use and reuse facilities

Risk calculations would be performed for use and reuse processes to determine whether the use and reuse method is "safe." This category of material (not waste) facilities whose risk is greater than one in 100,000 would be considered unacceptable for use and reuse facilities. However, since many scenarios for use or reuse of materials involve replacement of materials from "natural" or unrecycled sources, higher risk levels would be allowed if the quantitative risks of the recycling practice were not greater than the use of natural materials or unrecycled materials. The decision-making process would be accomplished through the use review determination made by the jurisdictional health department with guidance from Ecology.

Medium risk waste storage, processing or treatment facilities

These facilities could be regulated through an individual permit, a permit-by-rule, or a general permit, depending on the complexity and number of similar facilities in the state. Because solid waste processes in this category are considered medium risk it would be more likely that the individual or general permit would be used and that facility standards would be more stringent than for low-risk storage, process, or treatment facilities. Individual permits would not be ruled out for medium-risk facilities, however.

Medium risk solid waste disposal

These handling facilities would include disposal of solid waste in solid waste landfills. These are all regulated through an individual permit issued by the jurisdictional health department. the landfilling standards have been developed to ensure that risk is significantly **controlled.**

Low Risk Material/Solid Waste Handling Practices

The lowest level of risk concerns waste or material being used, reused, stored, treated, and disposed as solid waste, shown as the third column in Table 1. Its upper risk boundary has been discussed in the medium risk section, above.

Low risk material use and reuse facilities

Risk calculations would be performed for use and reuse processes to determine whether the use and reuse method is "safe." This category of material (not waste) facilities whose risk is less than one in 100,000 would be considered acceptable for use and reuse practices. However, since many scenarios for use or reuse of materials involve replacement of materials from "natural" or unrecycled sources, higher risk levels would be allowed if the quantitative risks of the recycling practice were not greater than the use of natural materials or unrecycled materials. The decision-making process would be accomplished through the use review determination made by the jurisdictional health department with guidance from Ecology.

Low risk waste storage, processing, or treatment facilities

These facilities could be regulated through an individual permit, a permit-by-rule or a general permit depending on the complexity and number of similar facilities in the state. Given their lower risk, the standards applied through any of these permit mechanisms should be less stringent than for medium-risk waste handling processes.

Low risk solid waste disposal

These handling facilities would include low risk solid waste landfills. These are all regulated through an individual permit issued by the jurisdictional health department. The landfilling standards may be significantly less stringent than medium-risk waste landfills, but nonetheless would be developed to ensure that risk is significantly **controlled**.

Exemptions and Exclusions

Exemptions or exclusions are two ways to address some solid wastes and some solid waste handling methods at *de minimus* or threshold levels of regulation. Exempting a waste from handling standards or permitting requirements still keeps the material a solid waste. Thus, it would still be subject to solid waste planning. Other aspects of law would apply as well, such as the application of the waste management priorities. Excluding a recovered material from the definition of a solid waste brings the material entirely out of the solid waste planning and regulatory arena. Exemptions or exclusions could be set through quantity thresholds, quality thresholds, and handling standards. For example, compost piles of a certain size (quantity), residential composting operations (quality) and turn over (use) rates for storage piles in buildings (handling).

De minimus quantities (too small to be concerned about) of solid waste or *de minimus* concentrations of contaminants also make this category low risk when examining the risk of these handling practices to human health and the environment. The waste generated and disposed of by a single-family farm or a single-family residence may be an example of a de minimus quantity of a solid waste. Stabilizing a hillside or leveling land with an inert waste such as demolition concrete, masonry or asphalt is a good example of a use/disposal practice where concentrations of contaminants in the wastes present a low risk.

Chapter 6
New Approaches for Solid Waste In Washington

Introduction

There are numerous successful alternate approaches to the permitting and regulation of environmental facilities. It appears that of all the various environmental management facilities, those facilities engaged in solid waste handling activities have the fewest permitting options available to them. This is true for both parties in the regulatory relationship – the regulator and the regulated. And, unlike other environmental media, in the solid waste sphere there is an ever-increasing emphasis on recovery and reuse of material from that waste stream. As result, those engaged in the business of recycling, the operation of recycling facilities or the regulation of these facilities need clear direction as to the ways in which these recovered materials can move safely out of the world of environmental regulation and law and into the world of commerce. There is a need to fundamentally rethink permitting to account for this dynamic.

This rethinking should be based on applying the concept of risk as an organizing principal. Given the dynamic nature of solid waste management, a risk-based approach could provide the regulatory community with more flexibility for the permitting questions they face. Flexibility in this context is the ability to continue to manage environmental risk from solid waste handling practices while allowing for more options to achieve that goal. An important subset of this goal is to make it clear when a recovered material or a recovery or reuse process is not a solid waste or a solid waste handling process.

Finally, a basic question to ask, in the context of regulatory reform, is how many permits are enough? If the objective of permitting in the context of environmental management is to minimize risk, then can some or all of that risk be managed through the numerous other permits that solid waste handling facilities typically receive? In other words, can some solid waste handling practices and their related environmental risks be "deferred" elsewhere in the regulatory system. If they can, then consideration should be given to better tailor solid waste permits to their unique environmental regulatory contribution.

Assistant Attorney General Comments

In order to explore any of these possibilities, it is important to understand the range of available options. The basic factor that establishes this range is the breadth of authority. The first step in this process is to identify any administrative, regulatory or statutory limits to options being considered. As a result, we asked the Ecology Section of the Attorney General's Office a series of questions related to: Current authority to establish tests to distinguish solid waste from the products recovered from such waste; alternate approaches to permitting; ability to clarify conflicting terms and; deferral of solid waste permitting. These questions were answered in an informal opinion prepared as part of this report. The following pages paraphrase that opinion.

Current Authority

Ecology currently has authority to adopt, by rule, a test to distinguish between a commodity and a solid waste.

In an informal opinion written in 1994, the Attorney General's Office answered a similar question asked by Representative Pete Kremen. (See Appendix 4) Rep. Kremen asked whether the land application of composted material was subject to regulation under chapter 70.95 RCW. To answer this question, the legal opinion first considered whether composted material still constituted "solid waste." If not, then its application to the land would not constitute "solid waste handling," and thus would not require a permit.

The informal opinion concluded that because the definition of "solid waste" in RCW 70.95.030(19) was ambiguous, it was within Ecology's discretion to "fill in the gaps" by interpretation. As long as the agency's interpretation served the purposes and policies of the statute, and did not amend the definition, Ecology was free to determine which materials should be deemed "solid waste" after being composted.

There have not been any changes to the statute or other governing law that would alter the conclusions stated in the informal opinion. Courts recognize that agencies have the discretion and expertise to interpret ambiguous statutory provisions. See, e.g., Asarco, Inc. v. Puget Sound Air Pollution Control Agency, 112 Wn.2d 314, 321-22, 771 P.2d 335 (1989).

Although Rep. Kremen's question focused on a particular material -- solid waste that had been composted -- most of the analysis in the informal opinion is relevant to the question whether Ecology may by rule adopt a test for distinguishing between a commodity and a solid waste. Determining whether a material is a solid waste requires consideration of the material's value: is the material worthless, or is there a willing buyer for it? In addition, the determination may also require consideration of whether the material contains physical materials or chemical or biological constituents unnecessary for the material's beneficial use. The opinion emphasized that any distinctions to be drawn between solid waste and other materials should respect not only the language of chapter 70.95 RCW, but also its purposes -- among them, to prevent pollution of air, land, and water, and to formulate a comprehensive solid waste management system for the state.

Although Ecology currently has authority to adopt by rule a test for distinguishing between a commodity and a solid waste, it appears advisable to add the test to chapter 70.95 RCW. If the statute is amended, it can be much simpler and require far fewer resources to promulgate an implementing rule.

The requirements that must be met during rulemaking are set forth in the Administrative Procedures Act (APA), chapter 34.05 RCW. The APA distinguishes between "significant legislative rules," "procedural rules" and "interpretive rules," and establishes different requirements for each. "Significant legislative rules" are those that adopt substantive provisions of law, the violation of which subjects a violator to penalty or sanction; establish, alter, or

revoke standards for permits; or adopt a new, or make significant amendments to an existing, policy or regulatory program. See RCW 34.05.328(5)((c)(iii). The APA requirements applicable to significant legislative rules are extensive.

Before adopting a significant legislative rule, an agency must, among other things, do the following:

- analyze alternatives to rulemaking and the consequences of not adopting the rule;
- complete a cost-benefit analysis of the proposed rule;
- determine that the proposed rule is the least burdensome alternative available;
- determine that the proposed rule does not require any actions that violate requirements of other law;
- ensure that the rule does not impose more stringent requirements on private entities than on public entities;
- justify any differences between the proposed rule and any federal law applicable to the same activity or subject matter; and
- coordinate the rule, to the maximum extent practicable, with other federal, state, and local laws that apply to the same activity or subject matter.

See RCW 34.05.328(1).

A rule establishing a test for distinguishing between a solid waste and a commodity likely would be considered a significant legislative rule. To adopt such a rule, therefore, Ecology would have to meet the requirements listed above. However, the APA exempts from these requirements "[r]ules adopting or incorporating by reference without material change ... Washington state statutes," as well as "[r]ules the content of which is explicitly and specifically dictated by statute." See 34.05.328(5)(b)(iii), (v). In other words, rules that simply repeat statutory language need not be analyzed and justified as must rules that reflect agency interpretation and discretion. Thus, if chapter 70.95 RCW were amended to incorporate a test for distinguishing between solid waste and commodities, then Ecology could adopt conforming rules and avoid many of the resource-intensive requirements that apply to significant legislative rules.

Alternate Permit Structure

Ecology can establish, by rule, a permit system that is fundamentally different from the current individual site-by-site permit system (i.e., general permit or permit-by-rule).

An individual permit is one tailored to a specific site or facility. General permits, on the other hand, are written more generically, and could be applied to any site or facility that met certain criteria. A permit by rule is similar to a general permit in that it contains no site-specific conditions. However, the conditions appear in a rule, rather than in a document entitled a "permit." The principal difference between individual permits, and general permits and permits by rule, is that the latter two permit types can be prepared in advance and used for multiple sites or facilities. Any of these three types of permits, however, would require compliance with specified conditions.

Permits by rule may be appropriate for medium risk or simple facilities. General permits can be technically expansive, and may be appropriate for disposal facilities of a similar class. For both types of permits, the necessary environmental controls can be easily anticipated and prescribed in a general way. By issuing general permits or permits by rule, the administrative burden on jurisdictional health departments should be lessened.

Chapter 70.95 RCW currently requires the operator of any solid waste handling facility to obtain a permit from the jurisdictional health department. See RCW 70.95.170. After receipt of an application, the jurisdictional health department is to determine whether the facility meets applicable laws and regulations, whether it conforms with the local comprehensive solid waste handling plan, and whether it complies with local zoning requirements. See RCW 70.95.180. Ecology also is to read the application, and "report its findings" to the jurisdictional health department prior to permit issuance. If the jurisdictional health department issues a permit, then Ecology must review it to ensure conformance with applicable laws and regulations, as well as the approved comprehensive solid waste management plan. See RCW 70.95.185.

Nothing in chapter 70.95 RCW specifies the form that the permit must take, or the contents of the permit. Historically, jurisdictional health departments have prepared individual permits for each site or facility. However, nothing in the statute as currently written requires an individual permit. Furthermore, the practice is consistent with that of other Ecology programs, which have interpreted statutory language authorizing them to issue "permits" as allowing the issuance of general permits and permits by rule.

For example, the water quality program has issued general permits for stormwater and other categories of dischargers that involve similar operations, discharge similar wastes, and require similar conditions and monitoring. See chapter 173-226 WAC. Ecology issues these general permits pursuant to RCW 90.48.180, which states that the "department shall issue a permit..." The dangerous waste program issues permits by rule for a variety of dangerous waste handlers, generally ones who operate under permits issued through other authorities, such as publicly owned treatment works and underground injection wells. See WAC 173-303-802. In so doing, Ecology relies on authority in RCW 70.105.130 to "establish a permit system..." Neither chapter 90.48 RCW nor chapter 70.105 RCW provides express authority to issue general permits or permits by rule.

Federal courts also have approved the use of general permits, noting that they ease the administrative burden of issuing permits while still providing necessary control over the permitted activities. See Natural Resources Defense Council, Inc. v. Costle, 568 F.2d 1369, 1380-82 (D.C. Cir. 1977) (general permits issued under the Clean Water Act's NPDES program).

For these reasons, the requirement to issue a solid waste handling permit could be satisfied by issuance of a general permit, or of a permit by rule. However, a few points that could affect how such a fundamentally different permit system might be implemented are noted below.

Current law allows only the jurisdictional health department to "issue" a solid waste permit, which could limit the usefulness of a general permit. Under most general permitting schemes, an agency issues a general permit without naming any specific permittees. Persons seeking a permit then apply for coverage, and after a specified period of time passes, are granted or denied coverage under the already existing general permit. In other words, unlike individual permits, general permits require two separate acts: permit issuance, and then individual coverage under the general permit.

Since Ecology cannot "issue" permits, the department could not adopt a general permit of statewide applicability. Unless the law were changed, the most Ecology could do to encourage the use of general permits would be to publish a general permit. Jurisdictional health departments would, however, remain responsible for deciding whether to use the general permit, or whether to issue individual permits.

If the goal is to promote consistency statewide concerning regulatory requirements for certain recycling activities, then the statute should be amended to allow this. There are numerous references in RCW 70.95.170 through .190 to jurisdictional health departments issuing permits; each of these would have to be changed to include mention of Ecology issuing general permits for certain types of solid waste handling facilities. If Ecology's role were to issue the general permits and the jurisdictional health departments' role were to grant or deny coverage under the general permits, then this new responsibility of the jurisdictional health departments should also be described in the statutory amendments. Since the statute currently refers to other permit-related matters, such as who sets the duration of permits and who collects permit fees, these provisions may also need to be modified to allow for a system in which Ecology issues general permits and jurisdictional health departments grant coverage.

Administrative Clarification

Ecology can, by rule, clarify conflicting terms in statute, such as disposal site, interim and final disposal, and utilization.

As explained above, an agency may "fill in the gaps" in statutory language. It is often best to adopt such clarifications or interpretations as rules. An agency may not, however, alter the meaning of legislation when interpreting statutory terms. Thus, Ecology can by rule clarify conflicting terms in statute, so long as Ecology's rules interpreting the statutory terms are consistent with the legislature's intent.

However, some of the significant terms in chapter 70.95 RCW are used in a confusing and perhaps inconsistent manner. For example, the statute uses two terms, "disposal site" and "landfill," that appear to mean the same thing, but that are defined somewhat differently. A "landfill" is a disposal facility or part of a facility at which solid waste is placed in or on land and which is not a land treatment facility. RCW 70.95.030(11). A "disposal site" is the location where any final treatment, utilization, processing, or deposit of solid waste occurs. RCW 70.95.030(6). Thus, treatment may occur at a disposal site but not at a landfill.

Under RCW 70.95.170, all solid waste handling facilities, including treatment and disposal sites, must have a permit. But under RCW 70.95.215(1), only a "landfill disposal facility" is required to establish a closure reserve account. Reading all of these provisions together, it seems clear that a solid waste treatment facility must have a permit, since it would be considered a "solid waste handling facility." The ambiguity inherent in the phrase "landfill disposal facility," however, makes it unclear whether such a facility would have to establish a closure reserve account.

Ambiguities like these could be clarified through rulemaking. If the legislature intends to amend chapter 70.95 RCW in other respects, however, it might be wise to seek amendments to some of the definitions in the statute at the same time. Those amendments could eliminate uncertainty as well as unnecessary verbiage.

Deferral To Other Permits

It would be best to amend the statute if permitting of solid waste handling facilities were to be deferred to other regulatory programs.

RCW 70.95.170 requires that an operator of a solid waste handling facility obtain "a permit from the jurisdictional health department pursuant to the provisions of RCW 70.95.180 or 70.95.190." The only permit contemplated in RCW 70.95.180 and 70.95.190 is a solid waste permit. Under current law, therefore, a legitimate argument can be made that solid waste handling facilities must obtain a solid waste permit to operate, and that permitting could not be deferred to other regulatory programs.

This argument does not necessarily produce efficient results, nor is it consistent with current practice. For example, the minimum functional standards, which include permitting requirements, do not apply to dangerous wastes. See WAC 173-304-015(3). Dangerous wastes are by definition also solid wastes, so under a strict interpretation of RCW 70.95.170 their handling should be regulated under a solid waste permit, as well as a dangerous waste permit. Most would agree, though, that no environmental benefit would be gained by issuing both a solid waste and a dangerous waste permit. Dangerous waste permits tend to be comprehensive and complex, and almost certainly would address all matters that normally would be addressed in solid waste permits.

Because RCW 70.95.170 sets forth a more absolute requirement than is necessary, it may be desirable to amend the statute. It would not be difficult to defer from the permitting requirement of RCW 70.95.170 some category of solid waste handling facilities. For example, that section could be amended to read as follows:

> After approval of the comprehensive solid waste plan by the department no solid waste handling facility or facilities, except for those facilities that ...., shall be maintained, established, or modified until the county, city, or other person operating such site has obtained a permit from the jurisdictional health department pursuant to the provisions of RCW 70.95.180 or 70.95.190.

The facilities to be exempted from the permitting requirement would be described where the ellipses appear above. Careful consideration should be given to the criteria used to exempt certain facilities, the regulatory programs to which the solid waste handling facilities would be deferred, and who – Ecology or the local jurisdictional health department – should make the decision to defer. The answers to these questions will determine whether regulation of deferred solid waste handling facilities can be consistent statewide, and whether the regulation can be comprehensive.

Solid waste handling facilities could be deferred from the permitting requirement if they were permitted under some other regulatory scheme, which could be federal, state, or local. Deferring to other federal or state regulatory permits, such as water quality or dangerous waste, will ensure consistency across the state. In other words, since these programs have either national or statewide standards that must be met for permit issuance, and may also have prescribed permit provisions, all solid waste handling facilities deferred to such programs would be subject to the same regulatory control.

By deferring to local programs, on the other hand, statewide consistency would be lost. Local governments have a great deal of authority to adopt ordinances to promote health, safety, and welfare, including protecting the environment. This authority leads to significant variations in local control. Some counties may, for example, have extensive land use laws, while others have none. Because of this variability, not all local laws may be effective at controlling environmental threats caused by solid waste handling facility operations. If the statute were amended to allow deferral to local regulatory programs, it might be wise to make such deferral contingent on proof that the local program will ensure adequate environmental protection.

One possible disadvantage of deferral may be loss of comprehensive control. Most environmental laws allow issuance of permits that will ensure compliance with the requirements of those laws only. So, for example, if permitting of a solid waste handling facility were deferred to an air permit, then the only permit conditions the facility would be subject to would pertain to air quality. If the only risks the facility presented were to the air, this approach might be acceptable. But if controls designed to protect other media were needed, then permits under those programs would have to be sought. In short, it may be necessary to obtain multiple permits under other regulatory programs to receive the same level of protection afforded by a single solid waste permit.

Finally, any statutory change to allow deferral should address whether Ecology or jurisdictional health departments will determine whether a given solid waste handling facility will be deferred to another regulatory program. It would be consistent with the roles currently established in the solid waste law to assign this task to Ecology. Historically, Ecology has been responsible for ensuring a minimum level of protection on a statewide basis, while local governments have been allowed to impose more stringent requirements. If Ecology determined the standards for deferral, it could retain responsibility for setting minimum levels of protection. Ecology could establish these standards by rule, and might want to consider creating a process by which local governments could petition to have their local regulatory programs examined and deemed adequate for purposes of deferral.

Pursuit of Change: Statute versus Rule

What proposals are available to us that will respond to the Legislature's charge? Would legislation or regulation work better? Legislation is policy setting and thematic in tone. Regulations are more specific and derivative of the general policies set down by the Legislature.

This section attempts to identify the strengths and weakness of legislation versus regulation. It then lists the advantages and disadvantages of six mechanisms for addressing the issue of oversight of material/waste handling methods.

This report is **not** attempting to spell out all of the regulatory details that would flow from legislation, or from Ecology's effort to change rules without additional legislation, since the regulation setting procedure is designed to elicit such detail. Each mechanism is illustrated by examples to give sufficient indication of the territory being covered. In this way, we hope to assist in the judgement as to whether new legislation would be required.

Pursuing many of these recommendations legislatively would have several strong advantages. The Legislature is increasingly requiring agencies to respond only to specific rule-writing authorization given in statute, rather than agencies writing rules under general authority in the law. Discussion at the legislative level would educate many as to the current issues that solid waste and recycled materials face. It could add to the conversation about industrial wastes being disposed on the land and what are appropriate regulatory mechanisms.

These discussions would help reaffirm roles for Ecology and the jurisdictional health departments and districts, as well as the relationship of permitting to solid waste plans and the legislature's intention to exempt certain recycled materials processes. Legislation also benefits Ecology because the Agency is less likely to be sued over interpretations of the law. Given all of the restrictions on passing regulations, in the end legislation may be administratively easier and cheaper for Ecology than trying to adopt a regulation without specific legislative direction.

However, legislation can be difficult to change once enacted, especially if there is extensive comment and amendments. For example, a politically generated list of wastes exempted without a clear rationale would make it difficult to craft a balanced regulation. Issues may be technically complex and interwoven, which may make the legislation difficult to discuss, debate and pass.

The regulatory process has particular advantages related to the greater detail and more in-depth discussion that a regulatory agency like Ecology can engage in. This is to say that regulations allow for a wider discussion of the issue because Ecology is not constrained by new legislative definitions. Ecology can be more flexible in rule writing and responsive to comments during the rule writing. This may be especially important for the details of new permitting or regulatory mechanisms, including use review determinations and categorical exemptions.

The regulatory path also follows the experience of most other states having solid waste laws that leave the details to the rule-writing process. Ecology has experience with previous regulations

and with other media (water and hazardous waste) doing this and so do the jurisdictional health departments.

On the other hand regulations have difficulty capturing the complexity of the world; they require constant interpretation and updating if they are not to become outdated and less usable. They also require knowledge not only on the part of the regulated community but also for the jurisdictional health departments and districts that must implement them.

Proposed Approaches

Low Risk

Proposal A: Establish Use Review Determinations (URD) for beneficial use and reuses for low risk solid wastes

Description: The law or a regulation would list solid waste and beneficial use or reuse practices involving low risk material/waste which are found to be acceptable. It would be likely that separate listings or procedures would be used for beneficial uses in "agronomic" and non-agronomic settings. No formal agency review would be necessary for a beneficial use listed in the law or the regulation. In addition, any person could apply to the jurisdictional health department to review a material/solid waste that is being beneficially used or reused. See the figure, *Beneficial Use Determination (Use Review Determination).*

Review and approval would be a one-time process, based upon information required by the use review determination process. The determination would allow the material handling practice to proceed without being considered a solid waste and with no further solid waste permitting. It could also be revoked if the material quality or material handling practice changed.

The criteria for use review determinations should be clearly spelled out in regulation **before** specific use review determinations and lists are established for specific material uses. These criteria could distinguish between a waste and a commodity by applying the following considerations:

- Virgin commodities/recovered materials have economic value; wastes are usually discarded and thereby do not have value.
- Virgin commodities/recovered materials have established markets and are ideally part of the unsubsidized free enterprise economy.
- A recovered material from a solid waste replacing a virgin material should have properties that allow its effective reuse. Also, this criterion should include the level of contaminants, as close to or below that of the virgin material being replaced. Recovered material should not require processing, especially chemical processing, to achieve those properties. These characteristics imply low or negligible risks to human health or the environment, as established by numerical risk levels.

- A recovered material from a solid waste is being using in a totally new way, with no comparison with crude materials. Such use should not violate air, water, or soil ambient standards or other environmental tests of its safety. [11]
- The recovered material from a solid waste is effective for its claimed use as a recycled material/commodity.[12]

The State/Local Context: For the use review determination process to be successful, a jurisdictional health department or district would have to review an individual use review determination for completeness and forward its recommendation to Ecology for concurrence. This would be similar to the individual permit review process now in use. Individual jurisdictional health departments and districts could be more stringent than the state as a whole, but that might result in "Swiss cheese" regulation that varies from county-to-county. Collectively, jurisdictional health departments and Ecology would also have to concur when a "generic" use review determination was placed in the law or the regulation.

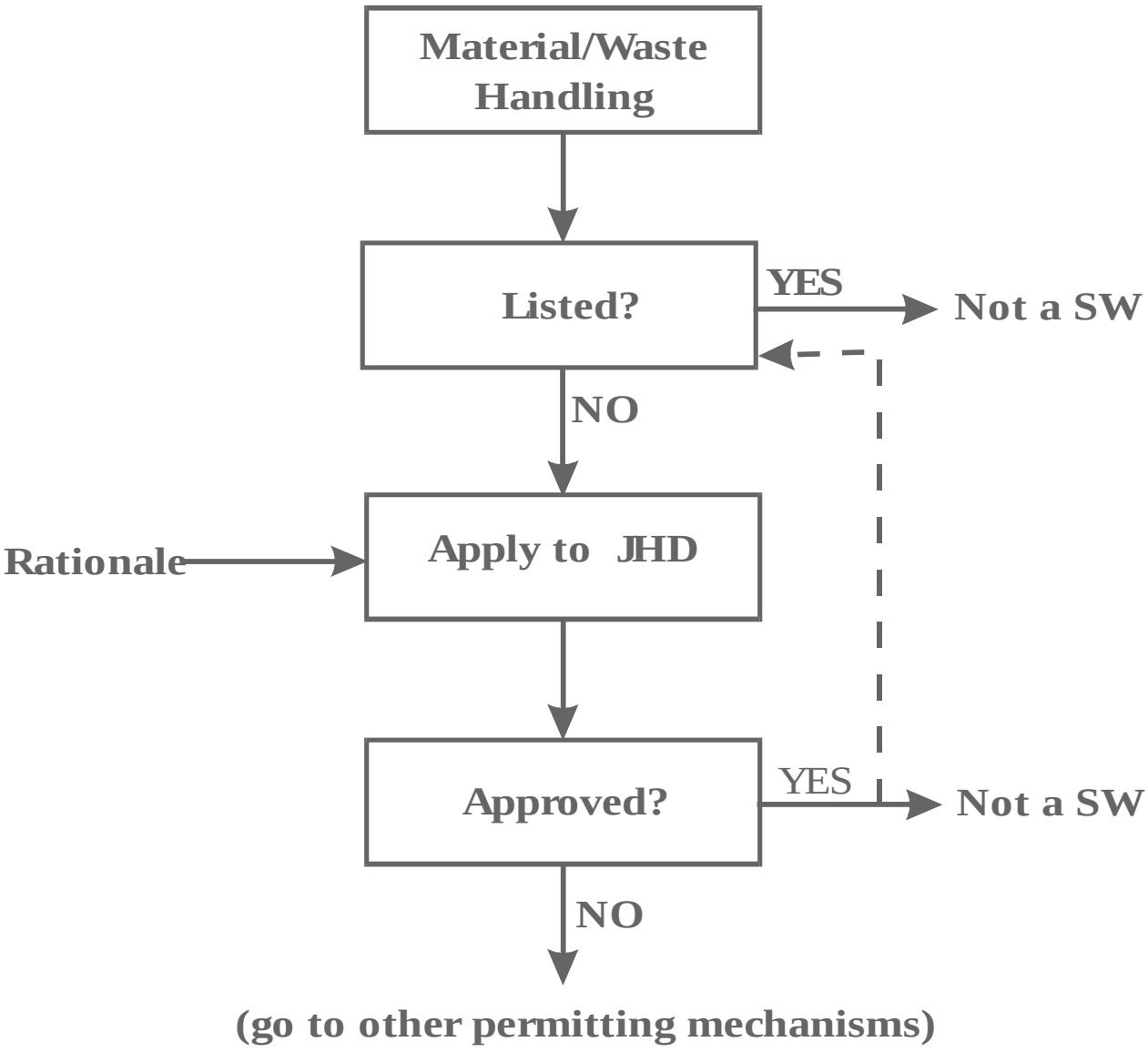
Applicability: Typically not for treatment, processing or storage operations; the URD would be used for waste being applied agronomically (i.e., for agricultural purposes) to the land with few pathways and with low risks, and non-agronomically (i.e., for non-agricultural purposes) for materials being used or reused directly.

Examples: Waste from wood manufacturing used as soil conditioners (envisioned as the process required for Ecology approval in the recent wood products as soil amendment bill, SSB 5701). This is an example of an "agronomic" use review determination. Materials, including solidified and encapsulated wastes, being used for construction or road-building purposes would be an example of a "non-agronomic" use review determination.[13]

Solid Waste Management Plan Context: The use review determination is **not** a permit, so there is no legal requirement in chapter 70.95 RCW for Ecology to review the use review determination against the Solid Waste Management Plan and approve it. (Just as there is not a demand that a hazardous waste determination be discussed in the plan and compared with the plan at the time of designation.)

[11] For example: Crumb (very finely ground) rubber added to horse pastures, football fields, and playgrounds to soften the soil from animal or human impact, and to enhance water retention.
[12] To avoid sham claims that a waste is being recycled.
[13] See Technical Information Memorandum Number 93-1, on use of glass for road building

Benefical Use Determination



Arguments for Proposal A

1. The use review determination process is consistent with recent and developing legislation in land application of industrial wastes, including SSB 5701.
2. Criteria for use review determinations can be methodically and rationally developed for inclusion in a regulation or law. Regulated community and health departments can have important input into developing the criteria for the use review determination.
3. Gives the regulated community a direct method of getting a decision from the jurisdictional health department and Ecology on the acceptability of beneficial use and reuse decision.
4. Gives a one-time decision rather than continuing permits and permit fees.
5. A use review determination would be useful for the regulated community when marketing their products, because it shows that their practices are acceptable from a human health and environment standpoint, using a numerical risk criterion.

Arguments against Proposal A

1. Use review determinations for **land application**, such as clean fill, may be confusing to the public and others when compared with the need to get permits for other types of **landfills** (MSW, woodwaste, industrial waste, etc.). Could also be confused with Proposal B, exemptions and exclusions.
2. Framing the issue of low numerical risk may be controversial, difficult and complex.
3. Permits may be perceived as being more protective of the public health and the environment because they have more opportunities for public review and are periodically renewed.
4. Would require administrative fees (to underwrite use review determinations) in legislation.

Proposal B: Develop categorical exclusions/exemptions from solid waste regulation, permitting, and/or specific handling standards[14]

Description: Law or regulation would make changes throughout the implementing standards (chapter 173-304 WAC)**,** to address solid waste/material handling methods generally known for their low risks or to relieve the administrative burden of regulating through the traditional permitting system. Small, medium-risk storage and processing facilities and smaller, medium risk disposal facilities could fall into the categorical exemption process if they are below threshold levels of regulation. This task would also involve developing a rationale to support specific categorical exclusions/exemptions.

The State-Local Context: Since the current Minimum Functional Standards contain exclusions and exemptions (see Chapter 3), the use and expansion of exclusions and exemptions should not be new and unfamiliar territory for either regulators or the regulated community.

Examples:

- Quantity thresholds, such as compost piles less than 40 cubic yards.
- Quality thresholds, such as residential composting operations.

[14] Including recycling, transfer, processing, storage, treatment and disposal

- Storage piles in buildings.
- On-site generation and reuse of recyclable materials in buildings.
- Materials or handling activities regulated by other statutes (i.e., Department of Natural Resources activities, Metals Mining Act)

Solid Waste Management Plan Context: The current plan guidelines do not require addressing in the plan those solid wastes that are categorically exempted or excluded in Sections 015, 300, 400, and 460 - 462 of chapter 173-304 WAC. Solid wastes excluded in Proposal B also should not have to be discussed in each of the county plans.

Arguments for Proposal B

1. The current regulation has exemptions and exclusions, as do most other regulations from other states. Exemptions/exclusions are familiar to most of the regulatory and regulated community.
2. When clear and defendable criteria for exemptions are properly established, this approach can quickly and easily get some material/waste handling methods "off the table." Allows a potentially regulated owner or operator to know that they are in the clear and that they need not plow through the rest of the regulation to determine their status.
3. Less resource intensive (in the short run) for Ecology and jurisdictional health departments.

Arguments against Proposal B

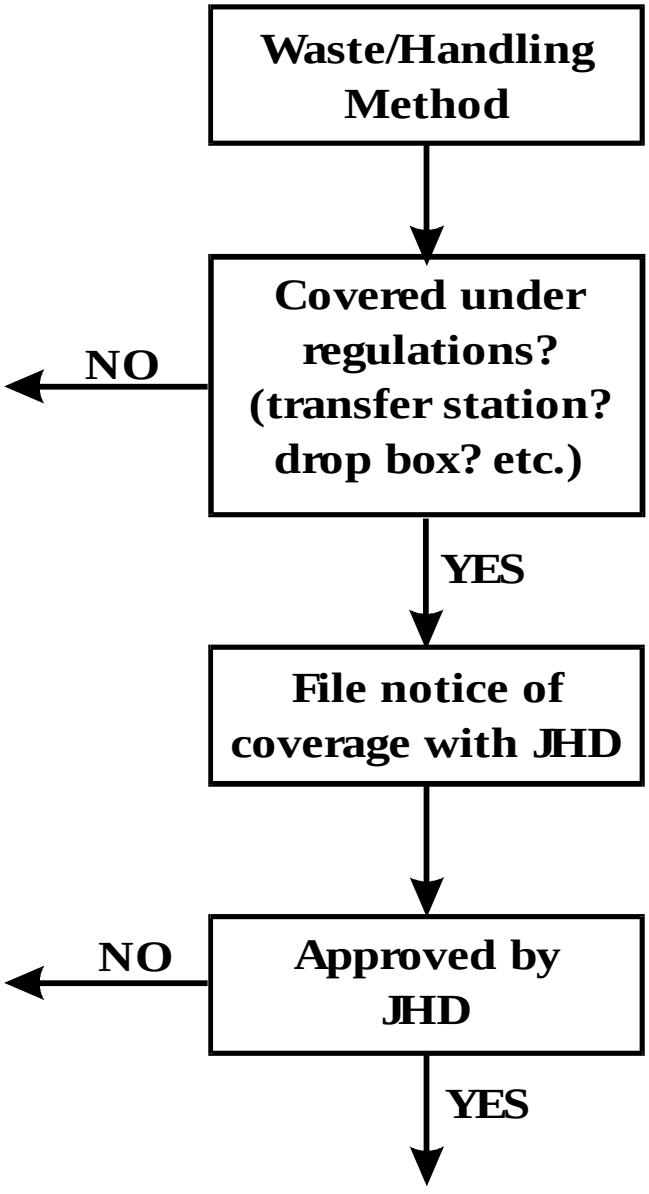
1. Exclusions and exemptions need to be based on a widely shared rationale for what deserves exclusion. Poorly drawn categorical exemptions create inequities and unfairness for very similar waste handling practices. (This is the current situation.)
2. Unlike the use review determination process, exemptions and exclusions would need legislative or regulatory actions, both of which take time and are difficult to change. Categorical exemptions are also much more prone to the "Christmas tree effect" of everyone wanting their waste handling methods excluded.
3. May undercut the use review determination process.

Low or Medium Risk

Proposal C: Develop a Permit-by-Rule Process

Description: A permit-by-rule is a paperless permit that allows coverage by an owner or operator who complies with conditions spelled out in the rule. When owners or operators believe their situation could be covered by the permit-by-rule, they notify the jurisdictional health department and receive approval in writing. The permit-by-rule is subject to inspection by the regulatory authorities. If owners or operators do not meet the conditions, the jurisdictional health department may revoke the permit-by-rule. Owners or operators might have to apply for an individual permit and pay penalties before they can continue to operate. See the figure, "Permit-by-Rule Process."

Permit-by-Rule Process



Applicability: For low and medium risk solid waste handling facilities.

The State-Local Context: Standards for permits-by-rule would be set at the state level and enforced at the local level by the jurisdictional health departments. This approach would require some sort of notification process to alert the regulatory authority that a process is coming under the terms of such a permit.

Examples: Could be used for transfer stations, material recovery facilities, bio-remediation of petroleum-contaminated soils, and on-site industrial waste facilities.

Solid Waste Management Plan Context: The meaning of the term "permit" is not defined in the statute, the regulation, or the solid waste management plan. The plan does not specify the permit mechanism, only that the permitting of solid waste facilities support the objectives of the plan.

Arguments for Proposal C

1. This is a common permit in the solid waste regulations of other states. It gives the state the opportunity to simplify permitting schemes, while still protecting human health and the environment, and encouraging recycling.
2. Relatively simple in structure to administer. Increases consistency and predictability within and between health jurisdictions.
3. Ecology has experience with permits-by-rule in water and hazardous waste regulations.
4. A permit-by-rule still satisfies the requirement in the current law that "every facility must have a permit," without having to change the law.
5. A permit-by-rule involves far less paperwork, meetings, negotiations and information sharing than a traditional individual permit.

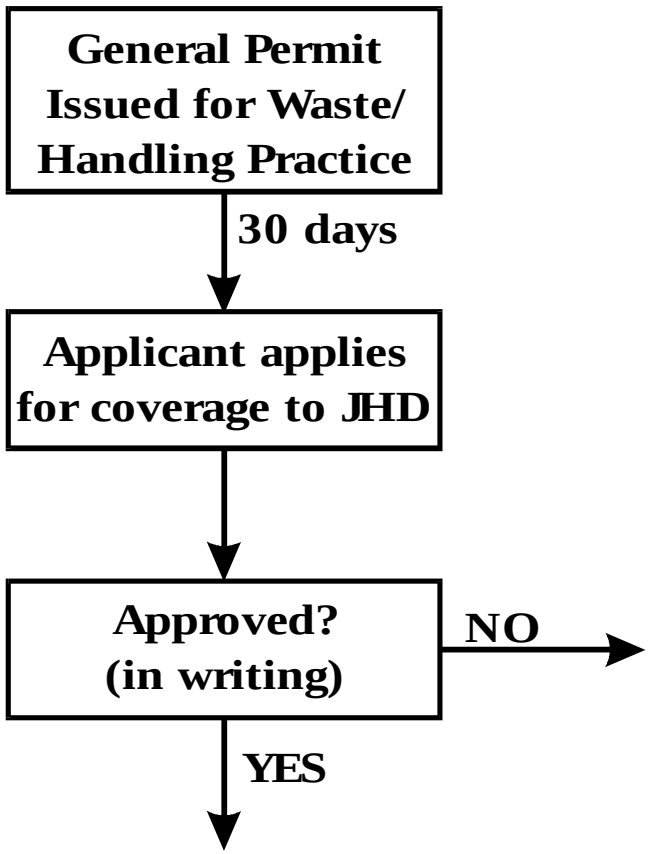
Arguments against Proposal C

1. Jurisdictional health departments and districts may find a permit-by-rule difficult and inflexible to use, because it embeds standardized permit conditions in the regulation.
2. Have to establish a fee structure, accompanying notification for a permit-by-rule. Some jurisdictional health departments and districts may be concerned about loss of funds compared with a site-specific permit.

Proposal D: Develop a General Permit Process

Description: General permits are permits written for and issued to a **category** of permittees whose operations, emissions, activities, discharges, or facilities are the same or substantially similar. See the figure, "General Permit Process."

General Permit Process



The general permit can be as detailed in content as an **individual** permit for a single point source or a single facility, incorporating facility handling standards, monitoring requirements, closure, and siting standards. It is technically more sophisticated and applies more stringent controls to assure equivalent protection for human health and the environment than the permit-by-rule. Ecology could also use interpretations of the general permit allowing its use for the generator, transporter, processor **or** land owner/operator. It is also more burdensome and expensive for the regulated community.

After an agency issues a general permit and a public notice according to procedures spelled out in the regulation, affected owners and operators have 30 days to apply for coverage under the general permit. The local jurisdictional health departments and districts would confirm in writing that the applicant is now covered by and subject to all of the conditions of the general permit. Failure to meet these conditions would subject the holder of the permit to penalties and possible revocation of the general permit. The owner or operator of the facility would then be forced to apply for and obtain an individual permit under the current rules.

If Ecology were given authority to issue general permits, all general permits issued at the state level would have the same issuance and expiration dates, usually five years in length. New facilities fall into the same timeline; however, unlike identical compliance schedules for existing facilities covered by a newly issued general permit, new facilities must have met the new requirements before they apply for coverage. Most importantly, whether issued or published by Ecology, there are no provisions in the general permit for individual or specific conditions that are addressed by an individual permit.

Applicability: General permits should be reserved for types of low or medium risk facilities where issuance of many individual permits with identical conditions would be wasteful and inefficient. Because the general permit is developed for reasons of administrative cost savings and convenience to the regulated community rather than for reasons related to risk, it would be applied to any low or medium risk solid waste handling operation. The lack of flexibility for site or process specific variations would mean that, for solid waste facilities, it should be used only where the waste/process/setting are very similar, such as treatment of petroleum-contaminated soil.

The State/Local Context: A general permit could be issued for the entire state or a geographic region such as western or eastern Washington. It is unlikely that general permits would be issued for as small an area as an individual health district, because this would make for an unacceptable patchwork of general permits based more upon political subdivisions than commonalities of climate, soils and physical setting. Ecology would be the most likely agency to "publish" a general permit. Ecology would still have the ability, under current authority in the law, to appeal a jurisdictional health department approval for issuing a general permit by appealing to the Pollution Control Hearings Board.

Examples: An example is application of organic industrial wastes to the land for treatment or for application at rates above true agronomic rates. In this case, clean closure would be part of the requirements.

Solid Waste Management Plan Context: The meaning of the term "permit" is not defined in the statute, the regulation or the solid waste management plan. The plan does not specify the permit mechanism, only that the permitting of solid waste facilities support the objectives of the plan.

Arguments for Proposal D

1. Many solid waste handling processes are similar enough that the general permitting mechanism would save money for the regulated community and the regulator, while still protecting the environment.
2. Similar facilities would negotiate the conditions of their permits together, allowing associations and others to represent large groups of businesses or interests, such as local governments, etc.
3. The general permit could achieve statewide consistency in permit conditions.
4. Ecology could initiate or modify general permits as new classes of facilities arise or as conditions warrant.
5. Local jurisdictional health departments and districts could shift resources from negotiations to enforcement.

Arguments against Proposal D

1. The relationship between Ecology and the jurisdictional health departments and districts with respect to issuance and approvals may be unclear and difficult to resolve under current law and without further legislative direction.
2. Some aspects of rule may be subject to legal challenge, where the state role is unclear. Implementation could be slow.
3. Legislature is increasingly asking agencies to tie rule making to specific legislative authorization.
4. The experience of the Water Quality Program has revealed difficulties for staff implementing the general permit and in addressing particular issues at individual facilities. General permits seem to be less used by other states for solid waste permitting purposes.
5. The general permit does not allow flexibility in permitting conditions for specific site conditions.
6. A class of facilities must be chosen carefully to ensure that one set of conditions will fit all facilities in the class.

High Risk

No Proposal: Retain existing system of individual permits for the hazardous waste or high risk category of risk.

Other Mechanisms

Proposal E: Modify the definitions of "disposal site" and "solid waste handling," and add the definition of "facility."

Description:

1. Amend the definition, "disposal site," to just "disposal," as follows:

"Disposal means the deposition, injection, dumping, spilling, leaking, incineration or placing of solid waste into or on the land or water."

The law currently does not have a definition of "disposal," comparable to the term "discharge of pollution" or "emission" in the water rules and air rules. We need this definition to allow us to distinguish what types of solid waste handling practices constitute disposal and what practices constitute use. (Also, the definition of "disposal site" dates back to 1969 and places landfills in the same definition as a "processing" facility or "utilization" facility. It is also unclear if the word "final" modifies all terms that follow, or just the word "treatment.")

2. Remove the words "final" and "utilization" from the definition of "solid waste handling," to read:

"Solid waste handling means the management, storage, collection, transportation, treatment, processing, and disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from solid wastes or the conversion of the energy in solid wastes to more useful forms or combinations thereof."

Amendments to chapter 70.95 RCW in ESHB 1419 replaced most of the references to "disposal site" with the term "solid waste handling facility." The definition for solid waste handling should reflect the change made above to the term "disposal site." Removing the word "final," allows a land treatment facility that is "disposing" of tag-along toxicants in excess of "how-clean-is-clean" to be permitted as a disposal facility. "Utilization" is an outmoded term that is otherwise covered by wording in the last part of the definition.

3. Add a definition of "facility" to the law, to read:

"Facility means all land, structures and other appurtenances or improvements where solid waste storage, treatment, processing or disposal occurs."

This definition replaces the "disposal site" definition, which has been recommended for deletion. The permitting sections of the law, specifically sections RCW 70.95.170, .180, and .190 refer to solid waste handling facilities; therefore there is a need to define that term.

Applicability: NA

The State/Local Context: NA

Examples: NA

Solid Waste Management Plan Context: NA

Arguments for Proposal E

1. Consistent with recent changes in the solid waste law.
2. Will help clarify what is reuse and what is disposal.

Arguments against Proposal E

1. Opens up all definitions.
2. The question of whether siting criteria should be established for other forms of disposal may be a disadvantage of opening the definition up at this time.
3. The question of whether reserve accounts should be established for other forms of disposal may also be a disadvantage of opening the definition up at this time.
4. May not be worth legislative effort unless combined with larger issues.

Proposal F: Defer solid waste permitting to other environmental permits

Description: This proposal would allow some environmental permits required for other media to substitute for a solid waste permit. This would be most feasible where the threat to groundwater, surface water and air quality are pre-eminent and:

1. There are only a few facilities statewide needing permits, so there is a minimal concern for consistency among local health districts;
2. There are no threats from vectors; and
3. It is not sham recycling through disposal masquerading as storage.

Where several other environmental permits have been required (such as a composting operation requiring both air and water quality permits), the regulator would determine the most critical threat (air or water) and would designate the corresponding permit as fulfilling the responsibility of the solid waste permit under ch. 70.95 RCW.

Applicability: Deferral would probably not be used for permits-by-rule or for general permits in cases where a sizable number of facilities would be needed before the economy of scale inherent in the permit-by-rule and general permit would make that effort worthwhile.

The State/Local Context: The criteria for deferral would have to be spelled out at the state level, either in law or in regulation.

Solid Waste Management Plan Context: The criteria for deferring solid waste permits would have to be spelled out in local solid waste management plans.

Examples: Deferring the permitting of surface impoundments for those that have been issued national or water quality state discharge permits.

Arguments for Proposal F

1. Both regulator and regulated would realize a saving of resources and duplication of effort.
2. Would encourage dialogue between different environmental agencies and different programs with Ecology, where one permit may be serving several purposes.

Arguments against Proposal F

1. A clear distinction between those facilities that can be subject to deferral of solid waste permitting and those that cannot, may be difficult to achieve and even harder to administer.
2. Appeals and the context of Ecology approval for deferral could be complex and difficult to administer.
3. Possible loss of comprehensive control for the permitting of similar facilities if jurisdictional health departments differ in deferral policies.
4. Fragmentation or loss of inspection/compliance and enforcement activities.

Proposal G: Coordinate solid waste permitting with the Growth Management Act and Land Use Planning Permits as directed by ESHB 1724

(Wait for ESHB 1724 to be implemented.)

Description: In 1995, the Washington State Legislature passed ESHB 1724, Integrating Environmental Review and Growth Management, directing Ecology and the Department of Community, Trade and Economic Development to develop amendments to the State Environmental Protection Act (SEPA) rules that would streamline environmental review and further integrate it with Growth Management Act (GMA) requirements. The proposed SEPA changes are expected to be adopted soon.

These changes would require all counties, cities and towns to adopt a local review process that combines project review with environmental review. Jurisdictions planning under GMA would be subject to additional requirements. According to ESHB 1724, project review should combine land use, environmental, public and governmental review from start to finish, so that documents prepared under different requirements can be reviewed together by the public and the agencies. The land use permitting, SEPA, other environmental and land use reviews, hearings, and appeals should no longer occur separately from each other. (Sections 202, 404)

Applicability: This proposal, calling for coordination between solid waste permitting and the SEPA and GMA processes, would apply to current site specific permits as well as the new forms of permits called for by this study – permits by rule and general permits. The use review determination, which allows recovered materials from waste to be considered materials, may take into consideration other possible environmental permits (for example fugitive dust or stormwater permits). This also provides the opportunity to comply with the URD process concurrently with the SEPA and GMA processes, especially where the material is being re-used

on the land. Categorical exemptions are set through the rule making process and would not be subject to coordination in the manner suggested in this proposal.

The State/Local Context: SEPA and GMA are implemented at the local level; solid waste permitting locally issued also fits well into the proposal for coordinated action to expedite the review of projects, including waste handling proposals.

Solid Waste Management Plan Context: The local comprehensive solid waste management plan would be a convenient vehicle to accomplish coordinating solid waste permitting in the context of SEPA and GMA.

Examples: NA

Arguments for Proposal G

1. Would require no action by Ecology.
2. Does not disrupt a process recently began or completed by some jurisdictions.
3. Requires no change in existing solid waste permit system.
4. Promotes early solid waste plan conformance determinations.
5. Promotes increased citizen participation beyond that normally found in solid waste permitting. Action would also lessen duplicative public review.
6. Maintains local government flexibility in designing a coordination process.
7. Saves time and money for the applicant.

Arguments against Proposal G

1. The deadline for implementing the legislation has passed. Mechanism for ensuring implementation is unclear.
2. Limited promotion of increased coordination between land use and solid waste planning efforts.
3. Maintains phased approach to the actual permitting process.

Chapter 7
Conclusions and Recommendations

The intent of the legislature, in passing ESHB 1419, was to have Ecology identify regulatory barriers to the recovery and recycling of secondary materials and to provide recommendations to address those barriers.

While there is not full agreement on approaches that should be taken, the department found that there is agreement and need to remove unnecessary regulatory barriers to strengthen the recycling industry and increase recycling. And, it is desirable to improve the local government's ability to prevent the few bad actors from adversely impacting human health and the environment. We heard clearly that local control and local enforcement are crucial to our current waste management system. We also found that regulatory barriers do exist, though not exclusive to environmental law. Barriers continue to exist in federal law and at the local level.

The effort undertaken through the course of this study has built a strong foundation to begin addressing issues through rule making, which the agency intends to initiate immediately and plans to complete in 1999. In order to address all issues, and accomplish the intent on ESHB 1419, Ecology and local governments will need additional authorities. Proposed legislative actions and rule changes are described below. Proposed legislative bill language for these actions is in Appendix 5.

Recommended Legislative Actions

Chapter 70.95 RCW, *Solid Waste Management -- Reduction and Recycling Act*, should be reviewed to reflect the current business and waste management system.

For Ecology:

- Allow categorical exemptions for wastes that are recycled and/or handling practices that pose no human health or environmental threat.

Ecology should proceed through rule-making to develop a categorical exemption process and rationale for solid wastes that should be exempt from the Minimum Functional Standards. The categorical exemption process is also an important avenue to simplify and reduce rule-making for obvious and broad categories of safe recycling practices. These exemptions should focus only on those facilities involved in the recycling of solid waste, and not on its transport or disposal.

- Establish a use review determination process for materials that are land applied.

The legislature should authorize Ecology to develop rules for a use review determination of materials from waste that can be beneficially used, taking into account the impact on human health and the environment. This use review determination is the most important mechanism

that can be brought to play to ensure that there is a balance between risk and regulation. It will bring certainty and agreement to the current uneven pattern of approaches to encouraging recycling. It also allows regulators to shift scarce resources to medium and high risk facilities.

For Local Government

- Provide authority to defer to other environmental permits

The Legislature should consider giving jurisdictional health departments the option to defer permitting to other environmental permits that adequately address environmental and human health protection. This would be done after Ecology has developed the necessary rules to achieve consistency throughout the state.

Recommended Rules

The agency has existing rules, ch. 173-304 WAC, that set minimum functional standards for solid waste facilities and describe the current permitting process. These regulations manage all types of solid waste facilities, except municipal solid waste landfills. These regulations were created prior to the initiation of the comprehensive waste recycling systems in place today throughout the state. Ecology should update these rules and incorporate appropriate mechanisms for classifying waste and material handling methods based on risk. The following recommendations cover issues related to recycling that are germane to the legislative charge of this study.

In rule making, Ecology will:

- Develop criteria for defining the term "inert," This is the first necessary step in implementing the recommended categorical exemption. The current definition in the rule was intended to apply to monolithic material like waste concrete, asphalt, and ceramics. The goal would be to develop an approach that would allow some wastes to be considered as safe as "natural materials" and managed like soil and rock.

- Examine alternative approaches to regulating surface impoundments that are non-overflowing or otherwise have no federally-based or state-issued water quality permits. These impoundments currently fall under solid waste regulation.

- Explore new approaches to regulating (or not regulating) transfer facilities and other solid waste management activities that occur within buildings. This might include innovative ways of permitting. This issue is driven somewhat by the need to save regulatory and enforcement resources for higher priority waste management activities.

- Ensure regulatory requirements are applied equally and appropriately to recycling efforts throughout the state. This includes examining regulations to ensure that they do not place an undue burden on suppliers of recycled materials, which are not applied to primary material suppliers that provide the same, albeit new, materials.

- Provide enforcement mechanisms for categorically exempt wastes or handling methods that could pose a risk if not appropriately managed.

- Explore developing the use of "model permits," which combine the features of general permits and individual permits, as another optional tool for local government.

When these authorities are granted and rules developed, Ecology believes that what statewide barriers to recycling that exist will be significantly addressed. We encourage the legislature to address federal issues as well. However, those issues can only be addressed through successful intervention in Congress.